

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at [www.FargoND.gov/streaming](http://www.FargoND.gov/streaming). They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, January 23, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. First reading of the following Ordinances:
  - a. Relating to Cigar Smoking in Public Places and Places of Employment Prohibited.
  - b. Relating to Taxicabs and Vehicles for Hire.
  - c. Relating to Classification of Ordinance Violations.
- 2. Pledged securities as of 12/31/22.
- 3. Direct the City Attorney to amend Fargo Municipal Code 25-1507, H. to add Alcoholic Beverage License Class "FA-Golf" to the licenses with a seasonal designation.
- 4. Direct the City Attorney to amend the Fargo Municipal Code adding a regulation relating to self-serve dispensing devices.
- 5. Gaming Site Authorization for the North Dakota Horse Park Foundation at the F-M Curling Club.
- 6. Applications for Games of Chance:
  - a. Kappa Delta Sorority for a raffle on 3/31/23.
  - b. NDSU Clay Target Club for a raffle on 4/22/23; Resolution for Public Spirited Organizations.
  - c. St. Mary's Cathedral for a raffle on 5/7/23.
  - d. Reese Scufsa Medical Benefit for a raffle and raffle board on 2/25/23; Resolution for Public Spirited Organizations.
- 7. Extension of the Class "FA" Alcoholic Beverage License for Prairie Pasta, Inc. d/b/a Johnny Carino's until 9/30/23.
- 8. Extension of the Class "A" Alcoholic Beverage License for Irish Hospitality d/b/a Hennessey's Irish Pub until 8/31/23.
- 9. Change Order No. 2 in the amount of \$16,699.00 for the multimedia studio space (PBC22-PS20135).
- 10. Reject bid for Newman Outdoor Field Project.

11. Planned Service Proposal with Johnson Controls at the FARGODOME (SSP23046).
12. Request for an increase of the annual fire permit fees, as proposed.
13. Piggyback purchase through the Sourcewell Cooperatives Purchasing Agreement to purchase 35 sets of structural firefighting turnout gear (PBC032620-INO).
14. Piggyback Contract with Fugro USA Land, Inc. for digital orthophotography, LiDAR/Contours, planimetrics and impervious surfaces for the GIS System (PBC-EMD-2022-CA-00011).
15. Engagement with Mullen Coughlin LLC for assistance with Breach and Privacy Counsel Services.
16. Direct the City Attorney to amend the Findings of Fact, Conclusions and Order for property located at 427 23rd Street South.
17. Change Order No. 1 in the amount of \$6,000.00 for the Dangerous Building located at 924 5th Street South (RFP22112).
18. Five-year Indigent Defense Service agreements with Joe Johnson and Stormy Vickers for January 1, 2023 through December 31, 2027.
19. Subrecipient Agreements between the City of Fargo, United Way of Cass Clay and FM Area Foundation.
20. Agreement for Professional Design Services with Interface Studio LLC for Downtown InFocus Update Additional Services (SSP22027).
21. Interest Buydown Agreement PACE Program with the Bank of North Dakota and J-Street Properties LLC.
22. Receive and file Hate Crimes Report for the 4th Quarter of 2022.
23. Bid award for fuel purchasing in the 3rd and 4th quarters of 2023 (RFV23003).
24. Bid award for the purchase of one enclosed steam generator (RFP23037).
25. Amendment to Recycling Agreement with Minnkota Enviroservices.
26. Change Orders for Project No. SW20-01:  
a. No. 5 for an increase of \$10,697.62 (civil construction contract).  
b. No. 6 for a decrease of \$759.60 (general construction contract).
27. Bid advertisement for Project No. SR-23-A.
28. Bid award for Project No. QR-22-A1.
29. Amendment No. 1 to Task Order No. 18 in the amount of \$13,905.00 for engineering services with Project No. WA2154, Regional Water Distribution Extensions.
30. Contract and bond for Project No. WA2158 (AFB22170).
31. Bills.

32. Final balancing Change Order No. 2 in the amount of \$1,966.97 for Improvement District No. NR-20-A3.
33. Final balancing Change Order No. 2 in the amount of \$24,687.48 for Improvement District No. NR-20-A2.
34. Change Order No. 1 in the amount of \$9,177.75 and time extensions for Phase 1 Interim, Substantial and Final completion dates for Improvement District No. BR-22-C1.

#### REGULAR AGENDA:

35. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
36. Resolution of Annexation for property north and west of the current Fargo city limits and set the date for the Hearing on the sufficiency of protests for March 20, 2023.
37. Application for Abatement or Refund of Taxes #4539 and #4540 for Hobby Lobby at 4427 13th Avenue South requesting a reduction in value for 2021 from \$7,272,000.00 down to \$7,210,000.00 and for 2022 from \$7,272,000.00 down to \$7,210,000.00.
38. Project development update on Fire Station 8.
39. Presentation on 2nd Street Pedestrian Bridge.
40. Applications for Property Tax Exemptions for Improvements Made to Buildings:
- a. Shirley Johnson T/O/D, 3211 Cherry Lane North (5 years).
  - b. Adriana Foley, 201 26 1/2 Avenue South (5 years).
  - c. Terrance and Angela Bartsh, 2532 Willow Road North (5 years).
  - d. Zachary Johnson, 3919 River Drive South (5 years).
  - e. Michaela Swanston, 1336 6th Street South (5 years).
  - f. Thomas and Lanette Calkins, 717 50th St South (5 years).
  - g. Wayne Ramsey and Patricia Olmstead, 1522 12th St S (5 years).
  - h. David Rider and Jayma Moore, 2874 Lilac Lane North (5 years).
  - i. Michael and Kimberly Gruchalla, 2849 Lilac Lane North (5 years).
  - j. Robert and Judith Anderson, 405 25th Ave North (5 years).
  - k. Gary and Amie Haugo, 808 8th St South (5 years).
  - l. Justin and Elizabeth Frye, 1250 5th St North (5 years).
  - m. William Thompson and Kimberly Luchau-Thompson, 1117 4th Street North (5 years).
  - n. Albert and Valerie Schmidt, 3301 Evergreen Road North (5 years).
  - o. Suzanne Larsen-Johnson, 1001 42nd Avenue North (5 years).
  - p. James and Kathy Rugroden, 1809 13th Avenue South (5 years).
  - q. Three Rivers Development, LLC, 306 15th Street North (5 years).
  - r. Lauren Sagar Bittara, Etal, 1537 24th Avenue South (5 years).
  - s. Keith and Wanda Fischer, 3019 Bohnet Boulevard North (5 years).
  - t. Paul Gleye III and Kay Schwarzwalter, 311 8th Street North (5 years).
  - u. Bruce and Nancy Taralson, 1110 3rd Avenue North Unit 703E (5 years).
  - v. Jason Forness and Michelle Mathson, 1132 3rd Street North (5 years).

41 Page 4 Support for HB 1460 by sending a letter to the members of the House of Representatives representing all of Cass County.

42. Legislative Update.

- a. Recognize Commissioner Kolpack as the Liaison Commissioner for legislative efforts at the 68th Legislative Assembly.

43. Liaison Commissioner Assignment Updates.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).



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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING ARTICLE 10-13 OF CHAPTER 10  
OF THE FARGO MUNICIPAL CODE  
RELATING TO CIGAR SMOKING IN PUBLIC PLACES AND  
PLACES OF EMPLOYMENT PROHIBITED

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in  
accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City  
shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said  
home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict  
therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to  
implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Enactment.

ARTICLE 10-13 – CIGAR SMOKING IN PUBLIC PLACES AND PLACES OF  
EMPLOYMENT PROHIBITED

10-1301 – DEFINITIONS

1. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device.

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2. "Cigar" means an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.
3. "E-cigarette" means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.
4. "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of health and human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
5. "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment

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unless it is used as a licensed child care, adult day care, or health care facility.

10-1302 – CIGAR SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT  
PROHIBITED

Cigar smoking is prohibited in public places and places of employment.

10-1303 – Penalty

An individual who smokes in an area in which smoking is prohibited under this ordinance is guilty of an infraction. An owner or other person with general supervisory responsibility who willfully allows a person to smoke in a place where smoking is prohibited is guilty of an infraction.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its publication.

\_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING AND  
REPEALING AND REPLACING ARTICLE 25-04  
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE  
RELATING TO TAXICABS AND VEHICLES FOR HIRE

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Enactment.

Article 25-04 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

ARTICLE 25-04  
TAXICABS AND VEHICLES FOR HIRE

Section  
25-0401. Definitions.--

The following words, terms and phrases shall have the meanings ascribed to them in this Article:

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1. "Applicant" means an organization or entity registered with the Secretary of State authorized to do business in the State of North Dakota applying for a license under this Article.
2. "For hire" means for remuneration or reward, paid or promised, either directly or indirectly.
3. "For hire driver" means any person in physical control of a taxicab or vehicle for hire required to be licensed under this Article.
4. "Lease driver" means a for-hire driver who is an independent contractor/sole proprietor who has leased a taxicab or for-hire vehicle from a taxicab/limousine licensee.
5. "Taxi" or "Taxicab" means a motor vehicle designed to carry passengers operating on the public streets, alley or places of the city of Fargo, and accepting passengers for transportation for hire on call or on demand, or as may be determined by the use of a taximeter, between such points as may be directed by the passenger, and that carries signs or indicia of a taxicab, including the words "taxi," "taxicab," or "cab."
6. "Taximeter" means an instrument or device that operates to calculate at predetermined rates and plainly displays the charges to the passenger of a taxicab. Any device which calculates fares charged to passengers for taxicab service, including devices which operate remotely based upon vehicle location technology, and which bases said fares upon time and distance, is considered a Taximeter, irrespective of whether such device is a portable or handheld device, monitor, smart phone or other electronic device or unit.
7. "Licensee" shall mean any taxicab or vehicle for hire service that secures authorization to commence a ride within the city of Fargo.
8. "Sober Ride Services" means a service whereby one driver drives the patron home and a second driver drives the patron's vehicle home. For such services, both drivers must meet all the requirements of this Article, including any requirements related to licensing, insurance, and background checks.
9. "Decal" means the license identification issued by the City Auditor that must be affixed to all vehicles licensed in accordance with this Article. The decal remains the property of the City and must be returned to the City Auditor for replacement, or in the event the vehicle is no longer in use. A fee for the replacement decal shall be established by Resolution of the board of city commissioners.

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10. "Personal vehicle" is a vehicle owned and licensed by an individual, and not the licensee. Personal vehicles are not eligible for licensing in accordance with this Article.

11. "Vehicle for hire" shall include limousine service, sober ride service, medical transport, handicap ride service, leased vehicles, party busses, or any other permutation in which a vehicle is driven for compensation.

12. "Wheelchair accessible taxicab" or "Wheelchair accessible vehicle for hire" or "Mobility Services" means a taxicab, for-hire vehicle, or any other vehicle conforming to the requirements of the Americans with Disabilities Act (ADA). The licensee is responsible for any additional training or equipment requirements to operate this type of service.

13. "Solicitation" means the ability of a taxicab licensed under this Article to solicit a ride without a prearranged fare or location having been determined and in response to ride hailing on public ways.

**25-0402. Exceptions.**

This Article does not apply to a person operating a ground transportation service that is:

1. Operated under state or federal authority unless subject to the city's regulatory authority;
2. Operated for a funeral home in the performance of funeral services;
3. Provided by an employer or employee association for use in transporting employees between the employees' homes and the employer's place of business or between work stations, with the employees reimbursing the employer or employee association in an amount calculated only to offset the reasonable expenses of operating the vehicle;
4. Owned and operated by the federal or state government, by a political subdivision of the state, or by a person under contract with the city for operation of the vehicle;
5. Used in a carpool to transport the person and others on a prearranged basis between their homes and places of employment or places of common destination, if only a fee calculated to reasonably cover expenses is charged;
6. Used to transport children to or from school if only a fee calculated to reasonably cover expenses is charged;

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7. Owned by a nonprofit organization and carrying only passengers associated with that organization, if no compensation is received from any other person for carrying the passengers;
8. A courtesy vehicle, if the name of the business or sponsor of such vehicle is affixed to the outside of the vehicle; or
9. A transportation network company operating in compliance with North Dakota Century Code Chapter 39-34.

**25-0403. Application.**

Any person or entity that desires to operate a taxicab or vehicle for hire service must make application in writing to the City Auditor for a taxicab or vehicle for hire license, which application shall include the following:

1. A true copy of the registration with the Secretary of State evidencing authorization to do business in North Dakota.
2. The name and address of the applicant. If the applicant is not an individual person, the application shall state the names and addresses of all individuals owning an interest in such business, and if a corporation shall give the names and addresses of the officers and directors thereof.
3. Background information of the applicant, including criminal background completed by the Federal Bureau of Investigation, and Department of Transportation records for all jurisdictions in which the operator has resided, or any other background investigation process and investigation deemed necessary and appropriate by the Chief of Police of the city of Fargo, or designee.
4. Number of taxicabs or vehicles for hire intended to be operated. Such vehicle listing shall accompany the application and/or renewal.
5. The make, model and ownership information of all of the vehicles the applicant intends to use in operating the taxicab or vehicle for hire service, including the name of the manufacturer, the motor and serial number, the body type, the year when made, the number of passengers each vehicle will accommodate, and certification that each vehicle has been inspected by a certified mechanic and passed inspection as provided in section 25-0409 of this Article.

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6. An accurate and detailed description of the Logo or color scheme of the taxicabs or vehicles for hire, including inscriptions or monograms thereon, proposed to be operated by the applicant, which shall be distinctly different from that of the taxicabs or vehicles for hire of any other operators within the city of Fargo, so that ownership and identity may be readily ascertained by the police department and patrons of any taxicab or vehicle for hire.
7. A certificate of insurance showing the applicant has sufficient insurance to meet the requirements of section 25-0414 of this Article.
8. A statement signed by the applicant under penalty of perjury indicating an understanding that falsification of any statement, material or not, is sufficient reason for denial of the license and criminal prosecution.
9. Payment of the application fee as established by Resolution of the Board of City Commissioners.

**25-0404. Investigation.**

Upon completion of the application required, the application shall be submitted to the City Auditor, or his/her designee for review and investigation. Upon satisfaction of compliance with all license requirements, the taxicab or vehicle for hire license shall be issued. If the application is incomplete or cannot otherwise be approved, the application shall be denied, and the City Auditor shall provide a written explanation of the reason for denial.

**25-0405. Approval.**

In the event the application is approved and the license is granted, the City Auditor shall grant said license stating the name and address of the applicant, and identifying the vehicles authorized under said license. The City Auditor shall issue a numbered identification decal which must be affixed and displayed in the upper passenger side front window.

**25-0406. License Fees.**

The fee for taxicab or vehicle for hire licenses shall be set by Resolution of the Board of City Commissioners.

**25-0407. Expiration.**



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1 All taxicab or vehicle for hire licenses issued by the city of Fargo, unless sooner revoked by the  
2 city of Fargo, will expire on December 31 of each year. If the licensee applies for a renewal  
3 following the expiration of a license, a reinstatement fee in an amount to be established by  
4 Resolution of the Board of City Commissioners shall be applied.

5 **25-0408. Non-Transferable.**

6 Licenses issued under this Article shall be nontransferable. A transfer or attempted transfer  
7 thereof shall automatically result in a revocation of such license.

8 **25-0409. Vehicle Requirements and Certification of Inspection.**

- 9 1. No taxicab or vehicle for hire license shall be issued until the applicant files with the  
10 City Auditor certification that each vehicle licensed or leased has been inspected by a  
11 certified mechanic and has passed said inspection.
- 12 2. An automotive service excellence (ASE) certificate of inspection must be completed  
13 on a yearly basis and certified to the City Auditor with the taxicab or vehicle for hire  
14 license renewal.
- 15 3. Every holder of a license under this Article shall keep such vehicles in good  
16 serviceable condition so that each vehicle may be safely operated at all times without  
17 endangering the safety or property of the passengers carried or other persons.
- 18 4. The license for the operation of any vehicle not kept in a safe and serviceable  
19 condition shall be revoked and immediately removed from service.
- 20 5. The board of city commissioners may set by resolution an additional fee for each  
21 vehicle registered under this Article.
- 22 6. Vehicles must be maintained in a safe and sanitary condition. Licensee must remove  
23 all rubbish/garbage from the taxicab or vehicle for hire, and the windows must be  
clear for vision.

**25-0410. Taxicab Markings.**

Taxicabs must bear the licensees logo or identification in letters and words at least 4" in size on  
both sides of the vehicle. The markings must be in contrasting colors readily viewable to the  
Police Department and public, and bear the licensee's telephone number.

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**25-0411. Accident and Incident Reporting and ASE Inspection.**

All accidents involving a decedent vehicle pursuant to the Article shall be reported immediately to the City Auditor. The licensee shall provide an automobile service excellence (ASE) certificate of inspection pertaining to that vehicle, and take appropriate actions necessary to protect the traveling public.

**25-0412. Taxicab and Vehicle for Hire Drivers.**

No person shall drive, operate, use or cause to be used upon the streets of the city a taxicab or vehicle for hire unless the person driving the vehicle is properly licensed in accordance with North Dakota law and employed or endorsed by a holder of a city of Fargo taxicab or vehicle for hire license.

**25-0413. Driver Standards.**

A. Licensee must, on a yearly basis, verify that each and every taxicab or vehicle for hire driver in their employ or endorsement meets the following minimum standards:

1. Is a citizen of the United States or an alien admitted for permanent residence, or who has otherwise obtained work authorization from the U.S. citizenship and immigration services;
2. Is the holder of a valid driver's license authorizing operation of the licensed vehicle;
3. Is able to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
4. Is twenty-one (21) years of age or older;
5. Certify that the taxicab or vehicle for hire driver is free from any infirmity, physical or mental, which would render the driver unfit for the safe operation of the licensed vehicle;
6. Has a driving record, at least for the past three (3) years, clear of:
  - a. A license cancellation, a revocation, or a suspension;
  - b. A conviction for operating a motor vehicle without insurance

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1 c. A conviction for driving a motor vehicle without a valid license for the class of  
2 vehicle driven;

3 d. A conviction for driving under the influence of alcohol or a controlled  
4 substance;

5 e. A conviction for alcohol related driving by a commercial vehicle driver;

6 f. A conviction for leaving the scene of an accident;

7 g. A conviction for reckless or careless driving;

8 h. Is not a registered predatory offender in any state;

9 i. Has a criminal record clear of any misdemeanor or felony conviction as a  
10 habitual offender for driving under the influence of alcohol or a controlled  
11 substance;

12 j. Has a criminal record clear of any crimes against persons, including but not  
13 limited to Conspiracy, Murder Manslaughter Criminal vehicular homicide and  
14 injury, Assault; Great bodily harm caused by distribution of drugs, Use of drugs  
15 to injure or facilitate crime, Robbery, Kidnapping, False imprisonment,  
16 Abduction; Criminal sexual conduct, Solicitation of children to engage in sexual  
17 conduct, Human trafficking, Theft of a motor vehicle, Fleeing a peace officer in a  
18 motor vehicle, Misusing credit card to secure services, or Burglary; and

19 k. Information indicating whether or not the applicant has ever had a for-hire  
20 driver's license suspended, revoked, or denied and for what cause.

21 B. A city of Fargo taxicab or vehicle for hire driver record form, or an alternative electronic  
22 record approved by the City Auditor, shall be used to document the drivers' records. All  
23 approved taxicab or vehicle for hire driver record forms shall be kept by the licensee for a  
minimum of five (5) years and shall be available for review by the city of Fargo immediately  
upon request. The city of Fargo shall have the right at any time and without prior notice to  
perform inspections of the licensee records to determine compliance with this Article. Failure to  
comply with this Article shall result in license suspension or revocation.

C. A daily manifest shall be maintained by the owner of each taxicab noting all trips made  
each day, showing the driver's name, cab number, place and time of origin and destination of  
each trip and the amount of fare. Every owner shall retain and preserve all drivers' manifests in

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1 a safe place for at least 180 days and such manifests shall be made available upon demand for  
2 inspection by the City Auditor.

3 D. No driver shall refuse or neglect to convey any person because of the person's race,  
4 color, national origin, religion, sex, age, handicap or any other persons recognized under Federal  
5 and State laws.

6 **25-0414. Insurance Required.**

7 A. No taxicab or vehicle for hire license shall be issued by the City Auditor until the license  
8 applicant obtains and provides proof of a policy of commercial auto liability insurance issued by  
9 a responsible insurance company authorized to do business in the State of North Dakota.

- 10 1. The licensee shall have and maintain such insurance in the amount of one million  
11 dollars (\$1,000,000) as well as fifty thousand dollars (\$50,000.00) property damage  
12 insurance.
- 13 2. Such insurance shall cover all passengers carried by the insured licensee and shall be  
14 for public taxicab or vehicle for hire purposes.
- 15 3. All such policies shall contain a clause providing for thirty (30) days' written notice to  
16 the City Auditor before cancellation, and a memorandum of such insurance naming  
17 the city of Fargo as an additional insured shall be furnished to the City Auditor before  
18 a license is issued.
- 19 4. Failure to maintain insurance as provided in this Article shall result in immediate  
20 suspension or revocation of the taxicab or vehicle for hire license.

21 **25-0415. Taxicab Rates.**

22 A taxicab licensee shall provide passengers with the applicable rates being charged and the  
23 option to receive an estimated fare before the passenger enters the vehicle. Unless a flat rate fee  
has been agreed to in advance, the taxicab must clearly display the rate to be charged, readily  
observable to a passenger, and such rate must be measured by a taximeter visible to the  
passenger at all times; each taxicab shall have only one taximeter. Taximeters must be activated  
with each taxicab trip or any time a taxicab driver accepts a fare. The rate charge must be  
uniform as to all passengers.

**25-0416. Receipts.**

The taxicab or vehicle for hire driver shall, upon demand by a passenger, provide a receipt for  
the amount charged, which shall include the name of the licensee, driver identification, the

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amount of the meter reading or charges, and the date of the transaction. Such receipt shall be in paper or electronic form, at the election of the passenger.

**25-0417. Stands.**

Only licensed taxicabs may stop or stand on city of Fargo streets or alley ways while waiting for a fare.

**25-0418. Lost Articles.**

Whenever any package, money, articles of baggage or goods of any description are left in or on any taxicab or vehicle for hire, such driver shall, upon the discovery of such package or article, attempt to return the item in a timely manner. In the event the item cannot be returned to the passenger, the licensee shall retain possession of the lost item for not less than 15 days.

**25-0419. Smoking or Vaping Prohibited.**

Smoking and/or vaping of tobacco products is prohibited inside any taxicab or vehicle for hire.

**25-0420. Driver Impairment.**

A. No driver shall be permitted to operate a taxicab or vehicle for hire while under the influence of alcohol or any mood-altering drug (prescription or nonprescription). No driver shall possess any controlled substance or alcoholic beverage while operating a taxicab or vehicle for hire.

B. No driver shall be permitted to drive any vehicle carrying passengers for more than twelve (12) hours in any one 24-hour period.

C. Mobile phone use is prohibited while the vehicle is in motion, except in a hands-free mode. Navigation tools, including cell phones, must be separate devices from the taximeter, and only be operated in hands-free mode while the vehicle is in motion.

**25-0421. Occupants in Vehicle Must be Restrained.**

No person operating a taxicab or vehicle for hire shall allow a greater number of passengers to occupy or be transported in the vehicle than the number of legal seated/belted positions within said vehicle.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

**25-0422. Denial, Suspension of Revocation of License.**

1 A. Licensee and any taxicab or vehicle for hire in service by a licensee shall remain subject  
2 to random inspections by the City Auditor and/or designee to ensure continuing compliance with  
3 the terms of this Article. Refusal to permit or complete such inspection shall be cause for  
4 immediate suspension or revocation of the license.

5 B. The City Auditor may deny, suspend or revoke any license to operate a taxicab or vehicle  
6 for hire service as defined in this Article as stated in this Article, in addition to any of the  
7 following reasons:

- 8 1. Fraud, misrepresentation or incorrect statement contained in the application or made  
9 in carrying on the licensed or permitted activity.
- 10 2. Violation of any of the driver standards.
- 11 3. Conducting such licensed or permitted activity in such manner as to constitute a  
12 breach of the peace or a menace to the health, safety or welfare of the public, or a  
13 disturbance of the peace or comfort of residents of the city of Fargo, upon  
14 recommendation of the appropriate city official.
- 15 4. Expiration or cancellation of any required insurance.
- 16 5. Actions unauthorized or beyond the scope of the license granted.
- 17 6. Violation of any regulation or provision of this Article applicable to the activity for  
18 which the license has been granted, or any regulation or law of the state so applicable.
- 19 7. Failure to continuously comply with all conditions required as precedent to the  
20 approval of the license.

**25-0423. Appeal.**

21 Any person aggrieved by the action of the City Auditor in denying, suspending or revoking a  
22 license shall have the right to a hearing before the Board of City Commissioners on any such  
23 action, provided a written request is filed with the City Auditor within ten (10) days after receipt  
of the notice of such denial, suspension or revocation. The Board of City Commissioners may  
grant such license, confirm any suspension or revocation, or reinstate any such license. The  
action taken by the Board of City Commission after a hearing shall be final, subject to appeal  
pursuant to North Dakota Century Code Ch. 28-34.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed \$1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in section 27-01-10, N.D.C.C.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.

(SEAL)

\_\_\_\_\_  
Dr. Timothy J. Mahoney, M.D., Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication:

COMMISSIONER \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION**

**WHEREAS**, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

**WHEREAS**, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and

**WHEREAS**, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

**WHEREAS**, Article 3(G) of the Home Rule Charter of the City of Fargo, North Dakota grants the City of Fargo power to provide for the adoption, amendment, and repeal of ordinances and resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

**WHEREAS**, The City of Fargo has adopted an ordinance enacting Article 25-04 of Chapter 25 of the City of Fargo Municipal Code relating to Taxi Cabs and Vehicles for Hire; and

**WHEREAS**, Section 25-0406 of the Taxi Cabs and Vehicles for Hire ordinance states that the fee required shall be set by resolution by the Board of City Commissioners; and

**WHEREAS**, The Board of City Commissioners wishes to have uniformity in the fee structure; and,

**WHEREAS**, The Board of City Commissioners is desirous of setting the fees in a fair and equitable manner.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO** that the rates and license fees for the Taxi Cabs and Vehicles for Hire shall be set as follows:

Meter Rates:

Hourly Rate

\$ 43.00



Flag Drop and first 1/8 <sup>th</sup> mile	\$ 5.50
Mileage Rate – Days	\$ 1.95
Mileage Rate – Nights (9 pm – 4 am)	\$ 2.65
Application Fee (includes 3 decals)	\$ 100.00
Renewal Fee (includes 3 decals)	\$ 100.00
Additional decals each	\$ 10.00
Reinstatement Fee	\$ 250.00

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted.



**OFFICE OF THE  
CITY ATTORNEY**

**CITY ATTORNEY**  
Nancy J. Morris

**SERKLAND LAW FIRM**

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

**ASSISTANT CITY ATTORNEYS**

Ian R. McLean • Alissa R. Farol • William B. Wischer

February 2, 2023

1c

Board of City Commissioners  
City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Dear Mayor and Commissioners,

Please find for your consideration an Ordinance amendment that is a companion to the previously presented Ordinance pertaining to Taxicabs and Vehicles for Hire. The Taxicab and Vehicle for Hire Ordinance provides that it is a Class B misdemeanor to operate a Taxicab or Vehicle for Hire without first obtaining the required license. This ordinance adds a violation of section 25-0412 to the list of Class B misdemeanors. I am recommending that you waive receipt and filing in order to track the timing of this ordinance with the ordinance presented at your last meeting.

**Suggested Motion:** I move to waive the receipt and filing of the enclosed ordinance one week prior to first reading and that this be the first reading, by title of An Ordinance Amending Section 1-0305 (A)(1) of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations.

Please feel free to contact me if you have any questions, comments or concerns.

Regards,

Nancy J. Morris

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 1-0305(A)(1)  
OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE  
RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance to reduce the penalty for possessing a firearm or dangerous weapon from a Class B misdemeanor to an Infraction in order to conform to state law;

NOW, THEREFORE,

Be it Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 1-0305(A)(1) of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby amended to read as follows:

1-0305. Classification of ordinance violations.—

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320(D)

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

(failure to deliver plates) section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), section 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0321.1 (criminal mischief-hate crime), section 10-0322 (harassment), section 10-0322.1 (harassment-hate crime), section 10-0323 (simple assault), section 10-0323.1 (simple assault-hate crime), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) ( $\geq \frac{1}{2}$  oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-0412 (unlicensed taxicab or vehicle for hire), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1518(C) (minor misrepresenting age), and section 25-1518(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

\* \* \*

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval.

(SEAL)

\_\_\_\_\_  
Dr. Timothy J. Mahoney, M.D., Mayor

Attest:

First Reading:  
Second Reading:  
Final Passage:

\_\_\_\_\_  
Steven Sprague, City Auditor

2

## **MEMORANDUM**

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**TO: Board of City Commissioners**

**FROM: Steven Sprague, City Auditor**

**SUBJECT: Approval of Pledged Securities**

**DATE: January 25, 2023**

North Dakota Century Code section 21-04-11 requires the approval of securities pledged as collateral for City funds deposited in various financial institutions if the deposited funds exceed the FDIC insurance limit of \$250,000. NDCC calls for re-approval on a semi-annual basis.

At this time, I would request City Commission approval of securities pledged as collateral. Amounts are summarized by financial institution as follows:

Wells Fargo BNY Mellon	\$ 23,058,170
US Bank (Letter of Credit)	\$ <u>5,000,000</u>
Total Pledged Collateral	\$ <u>28,058,170</u>

Detailed pledge security reports are attached for your review.

If you have any questions, please call me at 241-1301

**Recommended Motion:**

**Approve the listing of pledged securities as of December 31, 2022.**



BNY MELLON

Broker/Dealer Services  
101 Barclay Street, 4th Floor East  
New York, NY 10286

Date: 12/30/22

001078 XBGSCD41  
ATTN: STEVEN SPRAGUE  
CITY OF FARGO  
225 4TH STREET NORTH  
FARGO ND 58012-4817

Account Id: WUB366

Tax Id Number: 456002069

This advice is supplied as part of the Tri-Party Collateral agreement among the Customer, Wells Fargo Bank, N.A. and The Bank of New York Mellon. Any questions should be directed to Vinnette Frater, Senior Associate, BDS/Tri-Party Services, (973)569-2411.

As agent we confirm the following collateralized deposit information received from Wells Fargo Bank, N.A. as of close of business the last business day of the month.

Date: 12/30/22

The collateral segregated on your behalf on 12/30/22 is as follows:

CUSIP	DESCRIPTION	QUANTITY	MARKET VALUE
36179XDG8	GNMA G2SF 5.500% 08/20/52	22,963,481.00	23,058,170.42
TOTAL MKT VALUE			23,058,170.42



## BNY MELLON

### BROKER DEALER SERVICES DIVISION PRICING, INDICATIVE DATA AND OTHER DISCLOSURES

The prices of financial assets and indicative data reported or reflected in reports furnished by the Broker Dealer Services Division (BDS) of The Bank of New York Mellon (BNYM) generally are provided by data providers and ratings agencies ("vendors") used by BDS in the ordinary course of business. Trust receipts will be valued based on the face amount of the underlying financial assets, as set forth therein. Prices and indicative data are not independently verified, and may contain errors or omissions.

With respect to certain newly issued financial assets, if vendors do not provide prices, such financial assets will be valued at par or the new issue price for up to three business days. Thereafter, such financial assets will be valued at zero.

With respect to certain financial assets other than new issues, vendors may not provide prices and may not update prices previously provided on a regular basis. If vendors do not provide prices or update previously reported prices within three business days, such financial assets will be valued at zero, unless other arrangements are agreed in writing.

Notwithstanding the foregoing, certain hard-to-price, thinly traded or illiquid financial assets are valued monthly with no adjustment during the interim period (details are available upon request by contacting BDS).

Although BNYM will not utilize prices obtained from brokers or dealers in providing services, BNYM may obtain from any broker or dealer prices and other information and data such as offering memoranda, observable and non-observable information and assumptions in order to assist BNYM's vendors in determining prices of particular financial assets.

With respect to certain financial assets that are not widely held or regularly traded, vendors may report prices based on valuation models which reflect underlying non-observable assumptions that may not be accurate or complete and such models and/or prices may not be regularly adjusted.

The prices reported by BDS may differ from the prices reported or used by other divisions of BNYM or its subsidiaries or affiliates, and such differences may or may not be material. Margin values reported in connection with triparty transactions may differ from margin values used by BNYM for its own account or for the account of its subsidiaries, affiliates or other clients.

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets in default, provided that the prices of such financial assets are made available to BNYM by a vendor which BNYM uses generally for valuing such financial assets.



## BNY MELLON

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets issued by your transaction counterparty or its subsidiaries or affiliates.

Average Traded Volume data is obtained from primary or secondary securities exchanges.

Market data, which is subject to availability, may or may not be current.

The information reported or reflected herein is proprietary to its suppliers and is for your internal use only. It may not be copied, reproduced, published, posted, transmitted, displayed, stored, modified, sublicensed, transferred, disclosed or distributed or used for any purpose without BNYM's express written permission or that of its vendors or other third parties, as applicable.

REPORTED PRICES, WHETHER PROVIDED BY VENDORS OR OTHERWISE OBTAINED AS DESCRIBED HEREIN, MAY NOT REFLECT THE ACTUAL AMOUNT THAT CAN BE REALIZED UPON THE SALE OF PARTICULAR FINANCIAL ASSETS.





Issue Date: November 1, 2022

LOC No.: 568755

Beneficiary: City of Fargo  
225 4th St. N  
Fargo, ND 58102-4817

Ladies and Gentlemen:

For the account of U.S. Bank National Association, CINCINNATI, OH, we hereby authorize you to draw on us at sight up to an amount of \$5,000,000.00.

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Monday, May 01, 2023.

This letter of credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We engage with you that multiple drafts drawn under and in compliance with the terms of this letter of credit will be duly honored at the Credit Department of the Federal Home Loan Bank of Cincinnati, 221 East Fourth Street, Cincinnati, Ohio 45202.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication 600.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Wishart".

---

Lisa Wishart  
Vice President

A handwritten signature in cursive script, appearing to read "Markus Pepper".

---

Markus Pepper  
Credit Operations Officer

c: Patricia Finnemore  
U.S. Bank National Association

3

Date: January 12, 2023

To: Fargo City Commission

From: Steven Sprague, City Auditor

Re: Ordinance Amendment – allowing FA Golf to be seasonal

The Liquor Control Board received a request from the Fargo Park District to allow the FA Golf license to be issued on a seasonal basis. This can be accomplished by adding FA Golf to section 25-1507 H, which lists the license classifications allowed to be issued seasonally.

The Liquor Control Board is requesting the City Commission direct the City Attorney to amend Section 25-1507 H of the Fargo Municipal Code adding the license classification FA Golf to the list of licensee classes which can be issued seasonally.

**RECOMMENDED MOTION**

**DIRECT THE CITY ATTORNEY TO AMEND FARGO MUNICIPAL CODE 25-1507 H ADDING LICENSE CLASS FA GOLF TO THOSE LICENSES WITH SEASONAL DESIGNATION**



January 9, 2023

City of Fargo  
Steve Sprague, City Auditor  
PO Box 2471  
Fargo, ND 58108

Dear Mr. Sprague:

The Fargo Park District as owners of the restaurants at the three municipal golf courses are requesting consideration by the City of Fargo to add FA-Golf as an allowed Seasonal License under the provisions of 25-1507 H. This would provide flexibility to our tenants so that we can provide food and beverage to the golfers and public during the golf season and allow the restaurant owners to close during the non-golf season when their business sales drop significantly.

The reason for the request is to help develop a relationship with the restaurant operators to provide consistent food and beverage restaurant service for the community and the golfers from year to year during the golf season.

Sincerely,

Dave Leker, Executive Director  
Fargo Park District

④

Date: January 12, 2023

To: Fargo City Commission

From: Steven Sprague, City Auditor

Re: Ordinance Amendment – regulate self-service dispensing devices

The Liquor Control Board and the City Commission approved a new license issued to Crafty Taps, which is using new technology of self-serving dispensing devices. The Liquor Control Board feels the City should have regulations in place relating to self-service dispensing devices.

The Liquor Control Board is requesting the City Commission direct the City Attorney to amend the Fargo Municipal Code adding regulation of self-service dispensing devices.

**RECOMMENDED MOTION**

**DIRECT THE CITY ATTORNEY TO AMEND FARGO MUNICIPAL CODE ADDING REGULATION RELATING TO SELF-SERVICE DISPENSING DEVICES**



**GAMING SITE AUTHORIZATION**  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02/2018)

5

G - \_\_\_\_\_ ( ) \_\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Full, Legal Name of Gaming Organization **North Dakota Horse Park Foundation**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location <b>F-M Curling Club</b>			
Street <b>4300 23rd Ave S</b>	City <b>Fargo</b>	ZIP Code <b>58104</b>	County <b>Cass</b>
Beginning Date(s) Authorized <b>2/7/23</b>	Ending Date(s) Authorized <b>6/30/23</b>		Number of twenty-one tables if zero, enter "0": <b>0</b>
Specific location where games of chance will be conducted <u>and</u> played at the site (required) <b>Games will be conducted and played in all public areas, excluding bathrooms</b>			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

**RESTRICTIONS (City/County Use Only)**

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---	---------------------------------

**ACTIVITY TO BE CONDUCTED** Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> <b>ELECTRONIC</b> Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> <b>ELECTRONIC</b> 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> <b>ELECTRONIC</b> Pull Tab Device		

**APPROVALS**

Attorney General	Date
Signature of City/County Official	Date <b>2/6/23</b>
PRINT Name and official position of person signing on behalf of city/county above <b>Steve Sprague/City Auditor</b>	

**INSTRUCTIONS:**

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

**RETURN ALL DOCUMENTS TO:**

Office of Attorney General  
Licensing Section  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505-0040  
Telephone: 701-328-2329 OR 800-326-9240



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9338 (09-2021)

25.00  
cc  
1/26/23  
6a

Applying for (check one)

☒ Local Permit ☐ Restricted Event Permit\*

Games to be Conducted ☐ Raffle by a Political or Legislative District Party

☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker\* ☐ Twenty-One\* ☐ Paddlewheels\*

Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.**

Name of Organization or Group of People permit is issued to Kappa Delta Sorority	Dates of Activity March 27-31, 2023	If raffle, provide drawing date March 31	
Organization or Group Contact Person Autumn Smith	Title or Position Vice President Events and Pr	Telephone Number 701-822-2312	
Business Address 1210 13th Ave N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Kappa Delta Sorority, North Dakota State University			
Site Address 1210 13 Ave N	City Fargo	ZIP Code 58102	County Cass

## Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Shark FlexStyle Air	\$300
Raffle	2 gift cards, valued at \$100 each	\$200
Raffle	2 gift cards, valued at \$50 each	\$100
Total (limit \$40,000 per year)		\$600

Intended Uses of Gaming Proceeds

80% Red River Childrens Advocacy 2022 ~~DDAA PCAA~~

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value:  (This amount is part of the total prize limit of \$40,000 per year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)

☐ Yes ☒ No

## Organization or Group Contact Person

Name Autumn Smith	Title VP Events and Programming	Telephone Number 7018222312	E-mail Address autumn.smith.1@ndus.edu
Signature of Organization or Group's Top Official		Title President Zoe McKinven	Date 01/24/2023

✓



## APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (09-2021)

\$25.00  
CC-3297  
1-26-23

(66)

Applying for (check one)

☒ Local Permit ☐ Restricted Event Permit\*Games to be Conducted ☐ Raffle by a Political or Legislative District Party☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker\* ☐ Twenty-One\* ☐ Paddlewheels\*

Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.

Name of Organization or Group of People permit is issued to NDSU Clay Target Club	Dates of Activity March 7, 2023	If raffle, provide drawing date April 22, 2023	
Organization or Group Contact Person William Jirik	Title or Position Secretary	Telephone Number (507) 602-0521	
Business Address 1340 Administration Ave	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different) 1303 University Dr N	City Fargo	State ND	ZIP Code 58102
Site Name (where gaming will be conducted) Shooting Park of Horace			
Site Address 4333 167th Ave SE	City Horace	ZIP Code 58047	County Cass

## Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	\$1,000 SCHEELS GIFT CARD	\$1,000
Raffle	CAMPING PACKAGE (See other page for break down)	\$587
Raffle	FISHING PACKAGE (See other page for break down)	\$524
Raffle	HUNTING PACKAGE (See other page for break down)	\$700
Raffle	WORK & PLAY PACKAGE (See other page for break down)	\$1,149
Total (limit \$40,000 per year)		\$3,960

## Intended Uses of Gaming Proceeds

Offset the cost of dues, competitions, and team practices.

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)

☐ Yes ☒ No

## Organization or Group Contact Person

Name William Jirik	Title Secretary	Telephone Number (507) 602-0521	E-mail Address william.jirik@ndsu.edu
Signature of Organization or Group's Top Official Tasha P...and		Title President	Date 01/24/2023



## APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (09-2021)

✓ 11704  
25.00  
1/29/23

6c

Applying for (check one)

☒ Local Permit☐ Restricted Event Permit\*

Games to be Conducted

☐ Raffle by a Political or Legislative District Party☐ Bingo☒ Raffle☐ Raffle Board☐ Calendar Raffle☐ Sports Pool☐ Poker\*☐ Twenty-One\*☐ Paddlewheels\*Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.**

Name of Organization or Group of People permit is issued to <b>St. Mary's Cathedral</b>	Dates of Activity	If raffle, provide drawing date <b>May 7, 2023</b>	
Organization or Group Contact Person <b>Jayne Feakes</b>	Title or Position <b>Administrator</b>	Telephone Number <b>701-235-4289</b>	
Business Address <b>619 7th St. N.</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) <b>St. Mary's Cathedral</b>		<b>58102</b>	
Site Address <b>604 N. Broadway</b>	City <b>Fargo</b>	ZIP Code <b>ND</b>	County <b>Cass</b>

## Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
raffle	Cash prizes: 1st, 2nd, 3rd, 4th place	\$3,500
raffle	grocery card	\$250
raffle	meat gift card	\$250
Total (limit \$40,000 per year)		\$3,000.00

Intended Uses of Gaming Proceeds <b>To help run our church programs, bus for the elderly, building maint</b>
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Total Retail Value: _____ (This amount is part of the total prize limit of \$40,000 per year)
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## Organization or Group Contact Person

Name <b>Jayne Feakes</b>	Title <b>Administrator</b>	Telephone Number <b>701-235-4289</b>	E-mail Address <b>jayne@cathedralotstmary.com</b>
Signature of Organization or Group's Top Official 		Title <b>Administrator</b>	Date <b>1/26/2023</b>





Page 37

**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (09-2021)

(60d)

CC  
25.00  
2/1/23

Applying for (check one)

☒ Local Permit☐ Restricted Event Permit\*

Games to be Conducted

☐ Raffle by a Political or Legislative District Party☐ Bingo☒ Raffle☒ Raffle Board☐ Calendar Raffle☐ Sports Pool☐ Poker\*☐ Twenty-One\*☐ Paddlewheels\**Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.***LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.**

Name of Organization or Group of People permit is issued to Reese Scufsa Medical Benefit	Dates of Activity 2/25/2023	If raffle, provide drawing date 2/25/2023	
Organization or Group Contact Person Mary Moen	Title or Position Lead Volunteer	Telephone Number 701-261-0878	
Business Address 3008 Elm St N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) El Zagal Shrine			
Site Address 1429 3rd St N	City Fargo	ZIP Code ND	County Cass

## Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	Half Day Surf Experience	\$699
Raffle Board	Candy for a Year	\$625
Raffle	Gift Cards from various local businesses	\$400
Raffle Board	Alcohol Collection	\$400
Raffle	Themed Baskets (pet, home decor, alcohol, household, food)	\$500
Total (limit \$40,000 per year)		\$2,624

## Intended Uses of Gaming Proceeds

Money will be donated to Denise Scufsa the mother of Reese Scufsa to assist with medical expense due to a heart transplant on 12/1/2022.

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

☐ Yes ☒ No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)

☐ Yes ☒ No

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)

☒ No ☐ Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)

☐ Yes ☒ No

## Organization or Group Contact Person

Name Mary Moen	Title Lead Volunteer	Telephone Number 701-261-0878	E-mail Address oh_honee@yahoo.com
Signature of Organization or Group's Top Official <i>Mary Moen</i>		Title Lead Volunteer	Date 1/31/2023

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## **MEMORANDUM**

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**TO:** Board of City Commissioners

**FROM:** Steven Sprague, City Auditor

**SUBJECT:** Johnny Carino's Liquor License Extension

**DATE:** February 2, 2023

The Auditor's office received a request to extend the Johnny Carino's Class FA alcoholic beverage license. This license was purchased in 2005 and the store is closing due to lack of employees to properly maintain the restaurant. The license is grandfathered in as the ordinance that prohibits selling the license was enacted in 2014. The management would like to actively pursue selling the license.

The request is a six-month extension of ordinance 25-1512 on liquor license to allow time to sell and transfer the license to a new entity.

### **Recommended Motion:**

Approve a six-month extension of ordinance 25-1512 until September 30, 2023 for the Johnny Carino's class FA liquor license.



January 23, 2023

Fargo City Commission  
225 4<sup>th</sup> St N  
Fargo, ND 58102  
Attn: Steve Sprague

Hello Steve

We would like to apply for one more extension on our liquor license. We are in the process of selling the building and need the extension to sale the license. Please let me know if you need anything further.

Thank you,

A handwritten signature in cursive script that reads "Todd G. Porter".

Todd Porter  
Owner



## MEMORANDUM

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TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Extension – Hennessey's

DATE: February 1, 2023

The Auditor's office received a request to grant an extension of the requirements of 25-1512 from Irish Hospitality d/b/a Hennessey's Irish Pub until August 21, 2023.

The City Commission granted Hennessey's an extension on March 8, 2021 running until September 20, 2021 and an additional extension to February 22, 2022, a third extension granted until August 22, 2022, a fourth extension was granted until February 27, 2023. Hennessey's has made substantial progress, the building shell is up and work continues on the interior, They are hoping to be ready for occupancy by June 1, 2023. At this time, Hennessey's is requesting an additional 6-month extension to August 21, 2023.

Please see the attached letter from the legal representative.

Please approve an extension of 25-1512 for Irish Hospitality d/b/a Hennessey's Irish Pub until August 21, 2023.

**Recommended Motion:**

**Move an extension of the requirements of 25-1512 to Hennessey's Irish Pub until August 21, 2023.**

William P. Harrie\*  
Mark R. Hanson\* \*  
Douglas W. Gigler\*  
Andrew L.B. Noah  
Jacqueline S. Anderson\*



\*Thaddeus E. Swanson  
\*Cloe A. Kilwein  
\*Anthony J.R. Anderson

Gregory B. Selbo, Retired

\*Also Licensed in Minnesota  
\* Also Licensed in South Dakota

February 1, 2023

**VIA E-MAIL**  
[SSprague@FargoND.gov](mailto:SSprague@FargoND.gov)

Steve Sprague  
City Auditor  
225 N. 4<sup>th</sup> St.  
Fargo, ND 58102

Re: Hennessy's License - Class A Liquor License A-9  
Our File No. 14010.001

Dear Steve:

I represent Irish Hospitality, LLC, the holder of the Class A liquor license No. A-9 issued by the City of Fargo to Irish Hospitality, LLC d/b/a Hennessy's Irish Pub ("Irish Hospitality").

During its August 8, 2022, Regular Meeting, the Board of City Commissioners of the City of Fargo ("City Commission") granted Irish Hospitality's request to have the License extended for six months, until February 27, 2023. See City Commission Minutes at <file:///G:/Files/14010.001/Shoppes%20at%20Osgood%20Hennessy's%20Liquor%20License/The%20City%20of%20Fargo%20-%20August%208,%202022%20Minutes.html%20-%20extending%20license%20to%202-27-23.html>.

As explained in prior communications to the City Commission, including my July 26, 2022, letter:

1. The bar Irish Hospitality plans to open, and seeks to transfer License A-9, is part of a redevelopment project located in the area of 32<sup>nd</sup> Ave. S. and I-29, Fargo, ND.
2. Irish Hospitality will be one of a number of businesses in the development. Irish Hospitality, therefore, has limited control as to when its space will be ready for occupancy.
3. Irish Hospitality has signed the lease for its space with the owner/landlord.
4. While construction supply demands and other issues caused by the continued Covid-19 pandemic make it difficult to predict when a development and

construction project will be completed, Irish Hospitality is pushing the owner/landlord toward completion.

- 5 While it looked like the space would not be completed and fit-up for 9 months, i.e. until end of May of 2023, Irish Hospitality was pushing the landlord to complete the project so the space can be occupied in March of 2023.
6. Even so, my July letter requested an extension of 6 months – until February 27, 2023, - to see if the space would be completed by that date or to provide the City Commission an update on the status of the development.

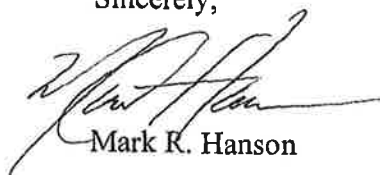
At present, the condition of the build and fit-up is as follows:

- a. The exterior shell of the Building that will contain the new space is already completed.
- b. Work continues on the interior.
- c. Supply chain and other delay issues make an opening in March unreasonable.
- d. Irish Hospitality is pushing the landlord to complete the building and fit-up for a June, 1, 2023 occupancy/opening.

**Thus, Irish Hospitality respectfully requests that Class A license No. A-9 be extended an additional 6 months to allow the space for the license to be completed and/or to provide the City Commission an update on the status of the development, including Irish Hospitality's anticipated occupancy date. The request is for a 6-month extension until the August 21, 2023.**

Thank you for your time and attention to this matter.

Sincerely,



Mark R. Hanson

MRH/mrh

Cc: Client [Via email only]

2 February 2023

9

The Board of City Commissioners  
Fargo City Hall  
225 Fourth Street North  
Fargo, ND 58102

Fargo City Commissioners,

At its August 8, 2022 meeting, the City Commission unanimously approved a bid award to Smartt Interior Construction of Fargo for modular walls to be used within the Citywide multimedia space (PBC22-PS20135)

During the course of subsequent electrical and AV installations within the space, the following project modifications have been identified as necessary for successful commissioning/occupancy:

- Construction of a stud wall to house electrical drivers and power supplies for lighting controls and audio visual technology (due to HVAC equipment fully occupying a support column within the existing building infrastructure);
- Two additional modular walls to accommodate electrical and audio visual control sub-panels;
- Installation of reinforced backplate technologies and a dry erase panel within the space for usage by staff as well as those utilizing the studio;
- Additional installation/labor costs and freight charges associated with the above changes.

Through many negotiations with the vendor and the utilization of cooperative purchasing agreements, the change order being proposed for the project is limited to \$16,699.

The total contract amount to Smartt Interior Construction would now be \$152,439.92; the existing and approved project budget is able to incur this change order. This will be the final change order for this element of the project.

Your approval of this change order would be greatly appreciated.

**Recommended motion:**

Concur with the recommendation of staff and approve Change Order No. 2 in the amount of \$16,699 for Smartt Interior Construction for the multimedia studio space project (PBC22-PS20135).

Please let me know if you have any questions; thank you for your consideration of this matter.

Sincerely,



Gregg Schildberger

Director of Communications and Governmental Affairs



PO Box 2002  
 Fargo ND, 58107  
 www.smartt-ic.net  
 800-231-1669

## CHANGE ORDER REQUEST

**PROJECT:** City of Fargo PD HQ 2nd FI - COMM  
**PROJECT #:** Dept

**ONSITE:**

**FINISH DATE:**

**STATUS:** Open

**COR IDENTIFIER:**

**REQUESTED:** 01/31/2023

**REQUIRED BY:** 02/06/2023

**APPROVED:**

### ASSIGNED TO:

Company	Employee Name	Employee Email	Employee Phone
City of Fargo	Gregg		

### FINANCIAL SUMMARY OF COR FOLLOWS

A	Materials (\$)		8,999.00
B	Labor (\$)		4,500.00
C	Implementation Expenses (\$)		3,200.00
D	Subtotal (D = A + B + C) (\$)		16,699.00
E	Direct Cost (E = D * %) (\$)	0.00 %	0.00
F	Subcontracts (\$)		0.00
G	Subcontractor OH (G = F * %) (\$)	0.00 %	0.00
H	Subtotal (H = D + E + F + G) (\$)		16,699.00
L	Tax Amount (\$)		0.00
	<b>COR Total**</b>		<b>16,699.00</b>

\*\* The "COR Total (\$)" amount above reflects all Taxes (if applicable), Fees, and Overhead expenses (OH) incurred in order to execute this Proposed Change.





PO Box 2002  
 Fargo ND, 58107  
 www.smartt-ic.net  
 800-231-1669

## CHANGE ORDER REQUEST

SIGNATURE BLOCK			
Signature: _____	Architect: <u>No Architect / Designer</u>	Date: _____	
Owner: _____	Owner Rep: _____	Date: _____	

The table that follow depicts the itemized list of expenses organized by category.

MATERIALS				
#	Description	Quantity	Taxes	Sell (\$)
1	DIRTT Materials for added elevations I, K, M and O	1.00	0.00	6,650.00
2	DIRTT backpainted glass tile with magnetic backplate for Elevation F	1.00	0.00	2,349.00
		<b>Totals</b>	<b>0.00</b>	<b>8,999.00</b>
LABOR				
#	Job Classification	Quantity	Taxes	Sell (\$)
4	Installation of additional DIRTT walls and building stud wall for AV	1.00	0.00	4,500.00
		<b>Totals</b>	<b>0.00</b>	<b>4,500.00</b>
IMPLEMENTATION EXPENSES				
#	Description	Quantity	Taxes	Sell (\$)
3	Freight	1.00	0.00	3,200.00
		<b>Totals</b>	<b>0.00</b>	<b>3,200.00</b>
SUBCONTRACTS				
#	Description	Quantity	Taxes	Sell (\$)
		<b>Totals</b>	<b>0.00</b>	<b>0.00</b>

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## Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** February 6, 2023  
**Re:** Bid Rejection for Newman Outdoor Field Project

---

Dear Commissioners:

Bids for a project to correct Exiting and Drainage issues at Newman Outdoor Field were opened at 11:45 AM on Wednesday, January 18, 2023.

There was a single bid submitted:

Gast Construction: \$318,500

- General Construction (Exiting): \$69,500
- Mechanical: \$249,000

The budget cap for this project was \$150,000. Facilities is recommending the rejection of this bid due to insufficient funds.

**Recommended Action:**

Approve the rejection of the bid for the Newman Outdoor Field Project due to insufficient funds.

**Newman Outdoor Field - Exiting and Drainage Improvements**

Fargo, North Dakota  
 BID TABULATION - January 18, 2023  
 Fargo City Hall  
 Engineers Conference Room



*Results. Done Right.*

\* 48-01 2-06 A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

	Bid Bond	Contractor's License	ADDENDA 1, 2	COMBINED BASE BID*	GENERAL BASE BID	MECHANICAL BASE BID	Remarks
Gast Construction Co., Inc. Fargo, ND	Y	961	1, 2	--	\$69,500.00	\$249,000.00	No alternates bid



January 25, 2023

(11)

Fargo City Commission  
City of Fargo Finance Committee  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Johnson Controls Maintenance via SSP 23046

Commissioners:

FARGODOME requests your approval of the attached three-year planned service proposal through Johnson Controls. This contract is utilizing the sole source procurement process as provided in the City of Fargo Purchasing Policy and was approved by the Fargo Dome Authority Building and Finance Committees at their meeting today.

FARGODOME's heating, ventilation, and air conditioning equipment was installed by and has been serviced by Johnson Controls since 1992. Additionally, Johnson Controls' proprietary HVAC monitoring software was installed in 2017. In order to maintain existing warranties, equipment must be serviced by Johnson Control technicians. The equipment and service coverage of the proposal is the same as prior contracts, which we deem to be adequate for our needs. The contract provides 24/7 coverage of major building systems. Johnson Controls has met our maintenance and service calls in a satisfactory manner.

The annual maintenance cost is included in the 2023 FARGODOME Operating Budget, as approved by both the Fargo Dome Authority and the Fargo City Commission. The annual expenses for years two and three will be included in the respective Operating Budgets.

Suggested Motion: To approve FARGODOME's three-year Planned Service Proposal with Johnson Controls, effective 2/1/2023, as included here.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik  
General Manager, FARGODOME

Sole Source Procurement Request  
**FARGODOME – 1/25/2023**  
Johnson Controls, Inc.

**Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:**

FARGODOME requests permission for sole source procurement for the three-year Planned Service Agreement with Johnson Controls, Inc. for the annual service/maintenance of the facility's heating, ventilation, air conditioning control equipment and software. The existing equipment and software is proprietary through Johnson Controls, Inc.

**Background:** All of the control hardware/software for the Heating, Ventilation and Air Conditioning ("HVAC") systems at FARGODOME were installed by Johnson Controls, Inc. ("JCI") and Chiller Systems (JCI subcontractor within the proposal). This equipment includes the Train Absorbers (building cooling and heating), Metasys Systems (electrical/digital sensing and operator control equipment) and HVAC and ATC (automatic temperature control), which electronically and pneumatically control the actuators and valves that are directed from the Metasys controller to control air handling units and exhaust fans throughout the facility.

Based on potential replacement and/or repair costs of this equipment, it is essential to have an annual maintenance agreement in place to have upgrades and preventative maintenance performed on this equipment on a regular basis.

The annual dollar amount of \$93,101 is included in the 2023 Operating Budget that was approved by the Fargo Dome Authority and Fargo City Commission. The annual cost for years 2 and 3 (\$96,643 and \$98,576) will be included in those years' respective FARGODOME Operating Budget for approval. Due to the proprietary nature of this product we are requesting permission for a sole source procurement.



## Sole Source and Piggyback Procurement Form

### Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Johnson Controls, Inc.

Estimated Dollar Amount of Purchase:

3-year: \$93,101/yr- 98,576/yr

Is this procurement funded by a federal grant?

No

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

Annual Maintenance/Planned Service Agreement for FARGODOME HVAC Control System with Johnson Controls.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

see Attached.

**Provide a brief description of how your investigation was conducted.** (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. \*\*)

NA

**\*\*If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

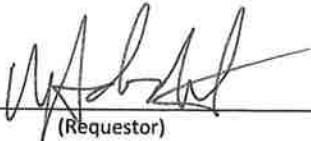
NA

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

NA



Signature: \_\_\_\_\_

  
(Requestor)

Printed Name: Rob Sobolik

Department: FARGODOME

Title: General Manager

Date: 1/25/2023

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.



(Requestor initials)

## Johnson Controls planned service proposal

Prepared for FARGODOME

Customer  
FARGODOME

Local Johnson Controls Office  
2320 12TH ST N  
FARGO, ND 58102-1806

Agreement Start Date:  
02/01/2023

Proposal Date  
01/3/2023

Estimate No:  
1-1J4REH0Y



## Partnering with you to deliver value-driven solutions

Every day, we transform the environments where people live, work, learn and play. From optimizing building performance to improving safety and enhancing comfort, we are here to power your mission.

A Planned Service Agreement with Johnson Controls provides you with a customized service strategy designed around the needs of your facility. Our approach features a combination of scheduled, predictive and preventative maintenance services that focus on your goals.

As your building technology services partner, Johnson Controls delivers an unmatched service experience delivered by factory-trained, highly skilled technicians who optimize operations of the buildings we work with, creating productive and safe environments for the people within.

By integrating our service expertise with innovative processes and technologies, our value-driven planned service solutions deliver sustainable results, minimize equipment downtime and maximize occupant comfort.

**With more than a century of healthy buildings expertise, Johnson Controls leverages technologies to successfully deliver smart solutions to facilities worldwide.**



Johnson Controls was recognized by Frost & Sullivan as the 2020 North American Company of the Year for innovation in the Smart connected Chillers market

## Executive summary

### Planned service proposal for FARGODOME

Dear Rob Sobolic,

We value and appreciate your interest in Johnson Controls as a service provider for your building systems and are pleased to provide a value-driven maintenance solution for your facility. The enclosed proposal outlines the Planned Service Agreement we have developed on your facility.

Details are included in the Planned Service Agreement summary (Schedule A), but highlights are as follows:

- In this proposal we are offering a service agreement for 3 Years starting 02/01/2023 and ending 01/31/2026.
- The agreement price for first year is \$93,101.00; see Schedule A, Supplemental Price, and Payment Terms, for pricing in subsequent years.
- The equipment options and number of visits being provided for each piece of equipment are described in Schedule A, Equipment list.

As a manufacturer of both mechanical and controls systems, Johnson Controls has the expertise and resources to provide proper maintenance and repair services for your facility.

Again, thank you for your interest in Johnson Controls and we look forward to becoming your building technology services partner.

Please contact me if you have any questions.

Sincerely,

Joshua Woinarowicz  
Service Manager  
(866) 818-5332

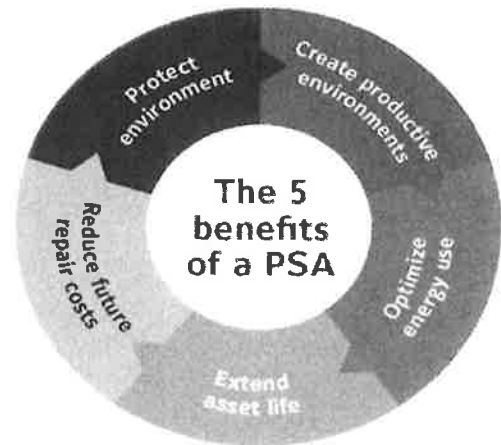
The power behind **your mission**

## Benefits of planned service

A Planned Service Agreement with Johnson Controls will allow you to optimize your building's facility performance, providing dependability, sustainability, and energy efficiency. You'll get a value-driven solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

With this Planned Service Agreement, Johnson Controls can help you achieve the following five objectives:

- 1. Identify energy savings Opportunities**  
Since HVAC equipment accounts for a major portion of a building's energy usage, keeping your system performing at optimum levels may lead to a significant reduction in energy costs.
- 2. Reduce future repair costs**  
Routine maintenance may maximize the life of your equipment and may reduce equipment breakdowns.
- 3. Extend asset life**  
Through proactive, factory-recommended maintenance, the life of your HVAC assets may be extended, maximizing the return on your investment.
- 4. Ensure productive environments**  
Whether creating a comfortable place where employees can be productive or controlling a space to meet specialized needs, maintenance can help you achieve an optimal environment for the work that is being accomplished
- 5. Promote environmental health and safety**  
When proper indoor conditions and plant requirements are maintained, business outcomes may be improved by minimizing sick leave, reducing accidents, minimizing greenhouse gas emissions, and managing refrigerant requirements.



All of the services we perform on your equipment are aligned with "The 5 Values of Planned Maintenance" and our technicians understand how the work they perform can help you accomplish your business objectives.

## Our partnership

### Personalized account management

A Planned Service Agreement also provides you with the support of an entire team that knows your site and can closely work with you on budget planning and asset management. Your local Johnson Controls account management team can help guide planned replacement, energy retrofits and other building improvement projects. You'll have peace of mind that an entire team of skilled professionals will be looking out for what is best for your facility and budget.

### A culture of safety

Johnson Controls technicians take safety seriously and personally and integrate it into everything they do. All of our technicians participate in regular and thorough safety training. Because of their personal commitment, we are a leader in the HVAC service industry for workplace safety performance. This means that you do not have to worry about us when we are on your site.

### Commitment to customer satisfaction

Throughout the term of your Planned Service Agreement, we will periodically survey you and use your feedback to continue to make improvements to our service processes and products. Our goal is to deliver the most consistent and complete service experience possible. To meet this goal, we've developed and implemented standards and procedures to ensure you receive the ultimate service experience – every time.

### Energy & sustainability

A more sustainable world one building at a time – Johnson Controls is a company that started more than 125 years ago with a product that reduced energy use in buildings. We've been saving energy for customers ever since. Today, Johnson Controls is a global leader in creating smart environments where people live, work and play, helping to create a more comfortable, safe and sustainable world.

### The value of integrity

Johnson Controls has a long, proud history of integrity. We do what we say we will do and stand behind our commitments. Our good reputation builds trust and loyalty. In recognition for our commitment to ethics across our global operations, we are honored to be named one of the World's Most Ethical Companies by Ethisphere Institute, a leading think tank dedicated to business ethics and corporate social responsibility. In addition, Corporate Responsibility Magazine recognizes Johnson Controls as one of the top companies in its annual "100 Best Corporate Citizens" list.

## Service delivery

As part of the delivery of this Planned Service Agreement, Johnson Controls will dedicate a local customer service agent responsible for having a clear understanding of the agreement scope, and your facility procedures and protocols.

A high-level overview around our service delivery process is outlined below including scheduling, emergency service, on-site paperwork, communication and performing repairs outside of the agreement scope.

## Scheduling

Preventative maintenance service will be scheduled using our automated service management system. In advance of the scheduled service visit, our technician is sent a notice of service to a smartphone. Once the technician acknowledges the request, your customer service agent will call or e-mail your on-site contact to let you know the start date and type of service scheduled.

The technician checks in, wears personal protective equipment, performs the task(s) as assigned, checks out with you, and asks for a screen capture signature on the smartphone device. A work order is then e-mailed, faxed, or printed for your records.

## Emergency services

Emergency service can be provided 7 days a week, 24 hours a day, 365 days a year. During normal business hours, emergency service will be coordinated by the customer service agent. After hours, weekends and holidays, the emergency service number transfers to the Johnson Controls after-hours call center and on-call technicians are dispatched as needed.

Johnson Controls is committed to dispatching a technician within hours of receiving your call through the service line. A work order is e-mailed, faxed, or printed for your records. Depending on the terms of your agreement, you may incur charges for after hour services.

## Communication

A detailed communication plan will be provided to you so you know how often we will provide information to you regarding your Planned Service Agreement. The communication plan will also provide you with your main contacts at Johnson Controls.

## Approval process for non-covered items

Johnson Controls will adhere to your procurement process. No work will be performed outside of the agreement scope without prior approval. Johnson Controls will work with you closely to ensure your procurement process is followed before any non-covered item work is started.

## Summary of services and options

### Comprehensive and operational inspections

During comprehensive and operational inspections, Johnson Controls will perform routine checks of the equipment for common issues caused by normal wear and tear on the equipment. Additional tests can be run to confirm the equipment's performance.

Routine maintenance, such as lubrication, cleaning and tightening connections, can be performed depending on the type of equipment being serviced. Routine maintenance is one of the keys to the five values of maintenance – it can help identify energy saving opportunities, reduce future repair costs, extend asset life, ensure productive environments, and promote health and safety.

### Install Updates supplied with Software Subscription

Our expert technicians will install software upgrades (supplied separately) to keep your system up to date. This helps minimize disruptions to your daily operations and staff during the upgrade process. Keeping your software up to date allows you to take advantage of the latest features and enhancements and helps maintain compatibility with the latest technology on the market. Updating the system software is also a best practice to minimize cybersecurity vulnerabilities.

### Customer Portal / Service Information Access

The Johnson Controls customer portal is the online gateway to easily access various elements of your service information. This real-time, self-service mechanism is just one more way for you to stay in touch with our service within your facilities. Using the internet, you can view service call history by location, monitor agreements, as well as view asset and invoice information.

## Summary

Thank you for considering Johnson Controls as your building technology services partner. The following agreement document includes all the details surrounding your Planned Service Agreement.

With planned service from Johnson Controls, you'll get a value-driven solution that can help optimize your building controls and equipment performance, providing dependability, sustainability, and energy efficiency. You'll get a solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

The power behind **your mission**



### Planned Service Agreement

Customer Name: FARGODOME  
Address: 1800 UNIVERSITY DR N FARGO, ND 58102-2241  
Proposal Date: 01/03/2023  
Estimate #: 1-1J4REH0Y

### Scope of Service

Johnson Controls, Inc. ("JCI") and the Customer (collectively the "Parties") agree Preventative Maintenance Services, as defined in Schedule A ("Services"), will be provided by JCI at the Customer's facility. This Planned Service Agreement, the Equipment List, Supplemental Price and Payment Terms, Terms and Conditions, and Schedules attached hereto and incorporated by this reference as if set forth fully herein (collectively the "Agreement"), cover the rights and obligations of both the Customer and JCI.

### Extended Service Options for Premium Coverage

If Premium Coverage is selected, on-site repair services to the equipment will be provided as specified in this Agreement for the equipment listed in the attached Equipment List.

### Equipment List

Only the equipment listed in the Equipment List will be covered as part of this Agreement. Any changes to the Equipment List must be agreed upon in writing by both Parties.

### Term / Automatic Renewal

This Agreement takes effect on 02/01/2023 and will continue until 01/31/2024 ("Original Term"). The Agreement will automatically renew and extend for successive terms equal to the Original Term unless the Customer or JCI gives the other written notice it does not want to renew prior to the end of the then-current term (each a "Renewal Term"). The notice must be delivered at least (90) days prior to the end of the Original Term or of any Renewal Term. The Original Term and any Renewal Term may be referred to herein as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

### Refrigerant Charges

Refrigerant is not included under this Agreement and will be billed separately to the Customer by JCI.

### Price and Payment Terms

The total Contract Price for JCI's Services during the first year of the Original Term is \$93,101.00. This amount will be paid to JCI in advance in Annual installments. Pricing for each subsequent year of a multiyear Original Term is set forth in the Supplemental Price and Payment Terms. Unless otherwise agreed to by the parties, All payments will be due upon receipt. Renewal price adjustments are set forth in the Terms and Conditions.

Invoices will be sent to the following location: FARGODOME  
1800 N UNIVERSITY DR  
FARGO, ND 58102

To ensure that JCI is compliant with your company's billing requirements, please provide the following information:

PO is required to facilitate billing:

☐ No: This signed contract satisfies requirement

☐ YES: Please reference this PO number:

AR Invoices are accepted via e-mail:

☐ YES: E-mail address to be used:

☐ No: Please submit invoices via mail

☐ No: Please submit via:

**This proposal is valid for thirty days from the proposal date.**

**JOHNSON CONTROLS Inc.**

JCI Manager:

Customer Manager:

JCI Manager Signature:

Customer Manager Signature:

Title:

Date:

Title:

Date:

JCI Branch: JOHNSON CONTROLS FARGO ND CB - 0N43

Address: 2320 12TH ST N

FARGO, ND 58102-1806

Branch Phone: (866) 818-5332

Branch Email:

## Schedule A

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**Trane Absorbers** Preventive and Repair labor and material will be provided by Chiller Systems, Inc. under subcontract for the three Trane absorbers. Overhauls are not included under this agreement and are to be performed on a time and material basis/not to exceed as indicated in the submittal information provided by chiller systems, inc. Recommended overhauls must be performed as scheduled to ensure continued repair labor and material coverage under the agreement. **Excluding:** any Absorber motor change out, any tube problems resulting in the change out of tubes, any bromide solution as listed #9 & #10 in Chiller Systems Service and Preventive Maintenance Agreement, Supplemental Conditions.

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**Metasys** Contract provides 4 Control PM visits per contract year. Preventive Maintenance labor for the facility will be provided under this agreement. Repair labor and material will be provided (as listed Chiller Room below) for the electrical/digital sensing and operator control equipment that resides in or controls the Chiller/boiler room. Repair Labor and Material are covered for the 3 NAE's & 4 NCE's along with main control computer in engineering office which includes software updates (excludes physical computer) in the facility. No other Metasys equipment in the facility has repair labor or material coverage. Repairs to equipment not covered by terms of this agreement will be performed via Labor and Material or a quoted price as the customer chooses. The preventive maintenance will be provided for in quarterly visits. Should the routine maintenance of the equipment require more than four visits, no additional costs will be incurred by the FargoDome and no hours of discretionary time will be used.

\*24/7 Extended Coverage

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**HVAC and ATC** Contract provides 4 Mechanic PM visits per contract year. Preventive Maintenance will be provided for in quarterly visits and include the labor and material to test and inspect the equipment for proper and efficient operation. Repair labor and material is included for the ATC (Pneumatics) air compressor, air dryer, ancillary filters, and mechanical valving within the chiller room directly controlled by electrical actuators directed from the Metasys controller. Repairs to equipment not covered by terms of this agreement will be performed via Labor and Material or a quoted price as the customer chooses.

\*24/7 Extended Coverage

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**Chiller Room** JCI will provide Repair Labor & Material in the Chiller Room for Metasys & ATC which Includes Equipment moved to F186 due to flood. (no change – same as prior years coverage)

\*24/7 Extended Coverage

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**Discretionary labor** The customer has a discretionary labor pool for mechanical and technical services. This pool consists of 200 labor hours (at straight time rate) for each category of work. (100 mechanical hours and 100 technical hours) Should the customer choose to use the discretionary pool during premium hours (time and a half or double time) the hours will deplete the pool at that rate. This Contract contains provisions for the "Discretionary" Use of labor. A number of hours were assigned to two (2) pools of labor designated "Technical" and "Mechanical". Should either of these pools become depleted and work is to be performed at the site, the remaining pool hours from either pool can be used for the work.

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Should the facility require labor to perform work on site that is out of the scope of the contract, or is needed as a result of hour depletion in the Discretionary pool or for any other reasons, the Guaranteed Rate for the term of this contract for

**Material will be List Less 50% and Labor shall be Street Rate less 10%.**

Current Street Rates as of 1/3/2023 Controls: \$198. Chiller: \$163. Mechanical: \$150.

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The above constitutes the entire agreement. No other services are implied. All repair material except those mentioned above, are additional cost.

**Supplemental Price & Payment Terms (Applies to Multi-Year Contracts Only)**

Year	Total Annual Dollar Amount	Payment Frequency
Year 1	\$93,101.00	Monthly
Year 2	\$96,643.00	Monthly
Year 3	\$98,576.00	Monthly

**Special Additions and Exceptions**

***24/7 Extended Service: JCI will provide onsite Response 24 hours a day, 7 days a week (including Holidays)***

Any item not covered under the planned service agreement will be brought to the attention of the customer and invoiced separately from the planned service agreement. These items will be invoiced at a preferred rate of **10% off** the prevailing base labor or on a quoted basis upon request. Our Service Team is available 24x7 and can be dispatched as requested to resolve any service needs outside the scope identified under Schedule A.

**TERMS AND CONDITIONS  
DEFINITIONS (REV 4/22)**

**DIGITAL ENABLED SERVICES** mean services provided hereunder that employ JCI software and cloud-hosted software offerings and tools to improve and enable such services. Digital Enabled Service may include, but are not limited to, (a) remote inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting.

**CONTRACT PRICE** means the price that Customer shall pay to JCI for the Services.

**COVERED EQUIPMENT** means the equipment for which Services are to be provided under this Agreement. Covered Equipment is set forth in Schedule A - Equipment List.

**EQUIPMENT FAILURE** means the failure, under normal and expected working conditions, of moving parts or electric or electronic components of the Covered Equipment that are necessary for its operation.

**PREMISES** means those Customer premises where the Covered Equipment is located, or Services performed pursuant to this Agreement.

**REMOTE MONITORING SERVICES** means remote monitoring of Covered Equipment and/or systems including building automation, HVAC equipment, and fire alarm, intrusion, and/or other life safety systems for alarm and event notifications using a UL Certified Central Station.

**REMOTE OPERATIONS CENTER (ROC)** is the department at JCI that remotely monitors alarm and industrial (HVAC) process signals.

**REMOTE OPERATING SERVICES** means remote interrogation, modification and/or operation of building automation, HVAC equipment, and/or other Covered Equipment.

**REPAIR LABOR** is the labor necessary to restore Covered Equipment to working condition following an Equipment Failure but does not include services relating to total equipment replacement due to obsolescence or unavailability of parts.

**REPAIR MATERIALS** are the parts and materials necessary to restore Covered Equipment to working condition following an Equipment Failure but excludes total equipment replacement due to obsolescence or unavailability of parts, unless excluded from the Agreement. At JCI's option, Repair Materials may be new, used, or reconditioned.

**SCHEDULED SERVICE MATERIALS** are the materials required to perform Scheduled Service Visits on Covered Equipment, unless excluded from the Agreement.

**SCHEDULED SERVICE VISITS** are the on-site labor visits required to perform JCI recommended inspections and preventive maintenance on Covered Equipment.

**SERVICES** are the work, materials, labor, service visits, and repairs to be provided by JCI pursuant to this Agreement except that the Services do not include the Connected Equipment Services or the provision of other software products or digital or cloud services, which are provided under separate terms and conditions referenced in Section P.

**A. JCI'S SERVICES FOR COVERED EQUIPMENT**

**1. BASIC COVERAGE** means Scheduled Service Visits, plus Scheduled Service Materials (unless excluded from this Agreement). No parts, equipment, Repair Labor or Repair Materials are provided for under BASIC COVERAGE.

**2. PREMIUM COVERAGE** means BASIC COVERAGE plus Repair Labor, plus Repair Materials (unless excluded from the Agreement). If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within forty-five (45) days of the date of this Agreement, or as seasonal or operational conditions permit. JCI will then advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With Customer's approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition, subject to the terms of this Agreement. Customer will pay for such work at JCI's standard rates for parts and labor in effect at the time that the work is performed. If Customer does not want JCI to perform the work identified as necessary by JCI, any equipment thereby affected will be removed from the list of Covered Equipment, and the Contract Price will be adjusted accordingly. Should Customer not make JCI's recommended repairs or proceed with the modified PREMIUM COVERAGE, JCI reserves the right to invoice Customer for the cost of the initial equipment inspection.

**3. EXTENDED SERVICE** means Services performed outside JCI's normal business hours and is available only if Customer has PREMIUM COVERAGE. Extended Service is available either 24/5 or 24/7, at Customer's election. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

**4. REMOTE MONITORING SERVICES OR REMOTE OPERATING SERVICES.** If Remote Monitoring Services or Remote Operating Services are provided, Customer agrees to furnish JCI with a list of the names, titles, addresses, email addresses, and phone numbers of all persons authorized to be contacted by or be able to contact the ROC to perform specific agreed upon actions with the appropriate authority. If JCI's Services include "Remote Monitoring Services with Open and Close," Customer also agrees to furnish JCI with Customer's daily and holiday opening and closing schedules. Customer agrees to maintain and update the call lists with accurate information. Customer further agrees to notify JCI of such changes as soon as possible. JCI/ROC is not responsible to find new contacts/numbers if the contacts on the call lists cannot be reached. A maximum of three contacts are allowed for any time of the day. If none of those contacts can be reached, then neither JCI nor

the ROC are responsible for damages. Customer is responsible for any and all costs and expenses arising from Customer's failure to provide timely updates for any of the contact information submitted to the ROC.

**5. CUSTOMER SERVICE INFORMATION PORTAL.** Customer may be able to utilize JCI's Customer Service Information Portal during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement.

**8. OUT OF SCOPE SERVICES**

If, during any Service Visit, JCI detects a defect in any of Customer's equipment that is not Covered Equipment under this Agreement (an "Out of Scope Defect"), JCI may (but shall have no obligation to) notify Customer of such Out of Scope Defect. If Customer elects for JCI to repair such Out of Scope Defect, or if JCI otherwise performs any Services or provides any materials, parts, or equipment outside the scope of the Services (collectively, "Out of Scope Services"), Customer shall direct JCI to perform such Out of Scope Services in writing, and Customer shall pay for such Out of Scope Services at JCI's standard fees or hourly rates. If, after receiving notice of an Out-of-Scope Defect, Customer elects not to engage JCI to repair such Out of Scope Defect, Customer shall defend and indemnify JCI from and against any and all losses, damages, claims, costs and expenses arising directly or indirectly out of such Out of Scope Defect. Any Out-of-Scope Services performed by JCI at the direction of Customer pursuant to this Section shall be subject to the Customer Terms in effect as of the Effective Date (the "Customer Terms"), which Customer Terms are incorporated into this Agreement by this reference. A copy of the Customer Terms currently in effect is found at [www.johnsoncontrols.com/customerterms](http://www.johnsoncontrols.com/customerterms).

**C. EXCLUSIONS**

JCI's Services and warranty obligations expressly exclude:

- (a) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slots/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- (b) disposal of hazardous wastes (except as otherwise expressly provided herein);
- (c) disinfecting of chiller condenser water systems and other components for biohazards, such as but not limited to, Legionella unless explicitly set forth in the scope of services between the parties. Unless explicitly provide for within the scope of services, this is Out of Scope Services and the Customer's exclusive responsibility to make arrangements for such services with a provider other than JCI. Mentions of chiller tube cleaning, condenser cleaning, cooling tower cleaning or boiler tube cleaning in any scope of services, only involve work to remove normal buildup of debris and scale using tube brush cleaning, pressure washing or acid flushing. Reference to such cleaning does not include chemical cleaning, disinfection or chemical water treatment required to eliminate, control or disinfect against biohazards such as but not limited to Legionella;
- (d) refrigerant; supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs and paper;
- (e) the furnishing of materials and supplies for painting or refinishing equipment;
- (f) the repair or replacement of wire in conduit, buried cable/transmission lines, or the like, if not normally replaced or maintained on a scheduled basis;
- (g) replacement of obsolete parts; and
- (h) damages of any kind, including but not limited to personal injury, death, property damage, and the costs of repairs or service resulting from:
  - abuse, misuse, alterations, adjustments, attachments, combinations, modifications, or repairs to Covered Equipment not performed, provided, or approved in writing by JCI;
  - equipment not covered by this Agreement or attachments made to Covered Equipment;
  - acts or omissions of the Customer, including but not limited to the failure of the Customer to fulfill the Customer Obligations and Commitments to JCI as described in Section F of this Agreement, operator error, Customer's failure to conduct preventive maintenance, issues resulting from Customer's previous denial of JCI access to the Covered Equipment, and Customer's failure to keep the site clean and free of dust, sand, or other particles or debris, unless such conditions are previously expressly acknowledged by JCI in writing;
  - use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer;
  - site-related and environmental conditions, including but not limited to power failures and fluctuations in electrical current (or "power surges") and biohazards such as but not limited to Legionella associated with condenser water, cooling tower systems and subcomponent systems;
  - the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;
  - issues or failures not specifically covered by this Agreement; or
  - occurrences beyond JCI's reasonable control and without JCI's fault or negligence.

**D. PAYMENT TERMS; PRICE ADJUSTMENTS**

Unless otherwise agreed by the parties in writing, fees for Services to be performed shall be paid annually in advance. Fees and other amounts due hereunder are due upon receipt of the invoice, which shall be paid by Customer via electronic delivery via EFT/ACH. Such payment is a condition precedent to JCI's obligation to perform Services under the Agreement. Any invoice disputes must be identified in writing by Customer within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. Customer acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and that failure by Customer to make payment in full when due is a material breach of this Agreement. Customer further acknowledges that if there is any amount outstanding on an invoice, it is material to company and will give JCI, without prejudice to any other right or remedy, the right to, without notice: (i) suspend,

discontinue or terminate performing any services and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend JCI's obligations under or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. JCI's election to continue providing future services does not, in any way diminish JCI's right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. JCI shall not be liable for any damages, claims, expenses, or liabilities arising from or relating to suspension of services for non-payment. In the event that there are exigent circumstances requiring services or the JCI otherwise performs services at the premises following suspension, those services shall be governed by the terms of this Agreement unless a separate contract is executed. If Customer disputes any late payment notice or JCI's efforts to collect payment, Customer shall immediately notify JCI in writing and explain the basis of the dispute. Customer will pay all of JCI's reasonable collection costs (including legal fees and expenses). In the event of Customer's default, the balance of any outstanding amounts will be immediately due and payable.

JCI may increase prices upon notice to the Customer to reflect increases in material and labor costs. All stated prices are exclusive of and Customer agrees to pay any taxes, fees, duties, tariffs, false alarm assessments, installation or alarm permits and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement. If this Agreement is renewed, JCI will provide Customer with notice of any adjustments in the Contract Price applicable to any Renewal Term. Unless Customer terminates this Agreement in writing at least ninety (90) days prior to the end of the then-current Term, the adjusted Contract Price shall be the price for the Renewal Term. Prices for products covered by this Agreement may be adjusted by Company, upon notice to Customer at any time prior to shipment and regardless of Customer's acceptance of the Company's proposal or quotation, to reflect any increase in Company's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

#### E. WARRANTIES

JCI warrants its Services will be provided in a good and workmanlike manner for 90 days from the date of Services. If JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will re-perform any non-conforming Services at no additional charge within a commercially reasonable time of the notification.

JCI warrants that equipment manufactured or labeled by Johnson Controls, Inc. shall be free from defects in material and workmanship arising from normal usage for a period of 90 days. No warranty is provided for third-party products and equipment installed or furnished by JCI. Such products and equipment are provided with the third-party manufacturer's warranty to the extent available, and JCI will transfer the benefits, together with all limitations, of that manufacturer's warranty to Customer. All transportation charges incurred in connection with the warranty for equipment and/or materials not covered under this Agreement shall be borne by Customer. Except as provided herein, if JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will repair or replace (at JCI's option) the defective equipment.

These warranties do not extend to any Services or equipment that have been misused, altered, or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty decals have been removed or altered. All replaced parts or equipment shall become JCI's property. This warranty is not assignable. Warranty service will be provided during normal business hours, excluding holidays. The remedies set forth herein shall be Customer's sole and exclusive remedy with regards to any warranty claim under this Agreement. Any lawsuit based upon the warranty must be brought no later than one (1) year after the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitations. **CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE JCI'S SOLE WARRANTIES AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** JCI makes no and specifically disclaims all representations or warranties that the services, products, software or third-party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, prevent, treat, or mitigate the spread, transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID 19.

#### F. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

1. Customer warrants it has given JCI all information concerning the condition of the Covered Equipment. The Customer agrees and warrants that, during the Term of this Agreement, Customer will:

- (1) operate the Covered Equipment according to the manufacturer's and/or JCI's recommendations;
- (2) keep accurate and current work logs and information about the Covered Equipment as recommended by the manufacturer and/or JCI;
- (3) provide an adequate environment for Covered Equipment as recommended by the manufacturer and/or JCI, including, but not limited to adequate space, electrical power, water supply, air conditioning, and humidity control;
- (4) notify JCI immediately of any Covered Equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
- (5) provide JCI with safe access to its Premises and Covered Equipment at all reasonable and necessary times for the performance of the Services;
- (6) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;
- (7) as applicable, provide proper condenser, cooling tower and boiler water treatment for the proper functioning of Covered Equipment and protect against any environmental issues and instances of biohazards such as but not limited to Legionella;
- (8) carefully and properly set and test the intrusion alarm system each night or at such other time as Customer shall close the Premises;
- (9) obtain all necessary licenses and permits required for and pay all taxes associated with the Services;
- (10) notify JCI immediately of any claimed inadequacy in, or failure of, the Covered Equipment or other condition affecting the operation of the Covered Equipment;
- (11) furnish any necessary 110 volt A/C power and electrical outlets at its expense;
- (12) properly maintain, repair, service, and assure the proper operation of any other property, system, equipment, or device of Customer or others to which the Covered Equipment may be attached or connected, in accordance with manufacturer recommendations, insurance



carrier requirements, or the requirements of any fire rating bureau, agency, or other authorities having jurisdiction thereof;

(13) not tamper with, alter, adjust, disturb, injure, remove, or otherwise interfere with any Covered Equipment (including any related software) and not permit the same to be done;

(14) refrain from causing false alarms, and reimburse JCI for any fine, penalty, or fee paid by or assessed against JCI by any governmental or municipal agency as a result thereof;

(15) be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply JCI secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access; and

(16) take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

2. Customer acknowledges and understands that unless water treatment for biohazards (such as Legionella) is explicitly included in the services JCI is providing, it is Customer's responsibility to provide such treatment. Customer also acknowledges that its failure to meet the above obligations will relieve JCI of any responsibility for any Covered Equipment breakdown, or any necessary repair or replacement of any Covered Equipment. If Customer breaches any of these obligations, JCI shall have the right, upon written notice to Customer, to suspend its Services until Customer cures such breach. In addition, Customer shall be responsible for paying or reimbursing JCI for any costs associated with corrective work required as a result of Customer's breach of these obligations.

#### G. INSURANCE

Customer is responsible for obtaining all insurance coverage that Customer believes is necessary to protect Customer, Customer's property, and persons in or on the Premises, including coverage for personal injury and property damage. THE PAYMENTS CUSTOMER MAKES UNDER THIS AGREEMENT ARE NOT RELATED TO THE VALUE OF THE PREMISES, CUSTOMER'S PROPERTY OR POSSESSIONS, OR THE PERSONS OCCUPYING OR AT ANY TIME PRESENT IN OR ON THE PREMISES, BUT RATHER ARE BASED ON THE COST OF THE SYSTEM AND THE SERVICES AND TAKE INTO CONSIDERATION THE PROTECTION AFFORDED TO JCI UNDER THIS AGREEMENT. Customer hereby releases JCI from any liability for any event or condition customarily covered by commercial liability insurance. Customer understands that neither the Services nor the Covered Equipment are designed to reduce, but not eliminate, certain risks. JCI does not guaranty that neither the Services nor Covered Equipment will prevent personal injury, unauthorized entrances or fire and smoke damage to the Premises. Customer further agrees that Customer has read and understands the terms and conditions of this Agreement.

#### H. INDEMNITY

JCI and Customer shall each indemnify the other party and its officers, agents, directors, and employees, from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of third-party claims, demands, or suits for bodily injury (including death) or damage to tangible property to the extent arising out of the negligence or intentional misconduct of the indemnifying party or its employees or agents. Customer expressly agrees that JCI shall be responsible for injury, damage, or loss only to the extent caused directly by JCI's negligence or intentional misconduct. The obligations of JCI and Customer under this section are further subject to sections I and K below.

#### I. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND ITS AFFILIATES AND THEIR RESPECTIVE PERSONNEL, SUPPLIERS AND VENDORS ("JCI PARTIES") BE LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY: (1) SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES; (2) LOST PROFITS, REVENUES, DATA, CUSTOMER OPPORTUNITIES, BUSINESS, ANTICIPATED SAVINGS, OR GOODWILL; (3) BUSINESS INTERRUPTION; OR (4) DATA LOSS OR OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, CYBER ATTACKS OR FAILURES OR INTERRUPTIONS TO NETWORK SYSTEMS. IN ANY CASE, THE ENTIRE AGGREGATE LIABILITY OF THE JCI PARTIES UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE SHALL BE LIMITED TO \$250,000. CUSTOMER UNDERSTANDS THAT JCI IS NOT AN INSURER REGARDING THE WORK OR THE SERVICES. JCI SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT MAY RESULT FROM FIRE SAFETY OR SECURITY EQUIPMENT THAT FAILS TO PERFORM PROPERLY OR FAILS TO PREVENT A CASUALTY OR LOSS.

#### J. FORCE MAJEURE

JCI shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by JCI to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of JCI, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases JCI's cost to perform the services, Customer is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

#### K. RESOLUTION OF DISPUTES

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve such dispute by negotiation. In the event the dispute is unable to be resolved, either party shall have the right to initiate arbitration by filing with the American Arbitration Association provided no other legal action has been previously filed. Upon filing of the arbitration, the AAA shall have the exclusive jurisdiction over the Dispute. Thus, either party may decide to file an action in a court of competent jurisdiction. If that court filing is the first legal proceeding filed, that court shall have jurisdiction over the Dispute to the exclusion of any arbitration. Arbitration shall be conducted in accordance with the then current arbitration rules of the American Arbitration Association or other arbitration service mutually agreed to by the parties. Arbitration must be completed within sixty (60) days after the Dispute is submitted to arbitration unless the parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment issued by the Arbitrator may be entered in accordance with applicable law in any court having competent jurisdiction. The party prevailing in the arbitration or court proceeding shall be entitled to an award of its reasonable costs, including reasonable attorneys' fees, incurred as a result of the Dispute. CUSTOMER MUST BRING ANY CLAIM AGAINST JCI WITHIN ONE (1) YEAR AFTER THE CLAIM AROSE. IF CUSTOMER DOES NOT, CUSTOMER WILL HAVE IRREVOCABLY WAIVED ITS RIGHT TO SUE JCI AND/OR INSTITUTE OTHER PROCEEDINGS, AND JCI SHALL HAVE NO LIABILITY TO CUSTOMER FOR SUCH CLAIM. TIME IS OF THE ESSENCE RELATIVE TO CUSTOMER PURSUING ANY SUCH CLAIM. THE PROVISIONS OF THIS AGREEMENT WHICH APPLY TO ANY CLAIM SHALL REMAIN IN EFFECT EVEN AFTER THE AGREEMENT IS TERMINATED. JCI AND CUSTOMER EACH WAIVE THEIR RIGHT TO A JURY TRIAL.

#### L. TERM AND TERMINATION

1. The Original Term is as set forth herein. At the conclusion of the Original Term, this Agreement shall automatically renew and extend for successive terms equal to the Original Term unless the Customer or JCI gives the other written notice it does not want to renew prior to the end of the then-current term (each a "Renewal Term"). The notice must be delivered at least ninety (90) days prior to the end of the Original Term or any Renewal Term. The Original Term and any Renewal Term may be referred to herein as the "Term." Customer agrees to issue and send a Purchase Order to JCI at least thirty (30) days prior to expiration of the Original Term or any Renewal Term if necessary for payments to be processed, but failure to do so is not a pre-condition to Renewal Term payments being due to JCI.

2. Remote Monitoring Services and Remote Operating Services may be immediately canceled by either party if JCI's Remote Operations Center, connecting wires, or monitoring systems are destroyed by fire or other catastrophe, or where the Premises are so substantially damaged that it is impractical to continue Services.

3. If either party fails to perform any of its material obligations under this Agreement, the other party shall provide written notice thereof to the party alleged to be in default. Should the party alleged to be in default fail to respond in writing or take action to cure the alleged default within ten (10) days of receiving such written notice, the notifying party may terminate this Agreement by providing written notice of such termination.

4. JCI may terminate this Agreement and discontinue any Services if JCI is unable to obtain or continue to support technologies, equipment or component parts that are discontinued, become obsolete or are otherwise not commercially available, or for convenience upon forty-five (45) days written notice. JCI will not be liable for any damages or subject to any penalty as a result of any such termination.

5. Upon termination of this Agreement for any reason, Customer shall pay to JCI all undisputed amounts owed through the date of termination within thirty (30) days of such termination. If Customer terminates this Agreement, other than in accordance with this Section L, Customer shall also pay Johnson Controls 35% of the charges for Services remaining to be paid for the unexpired Term of this Agreement as liquidated damages and not as a penalty. Customer shall provide JCI with reasonable access to the Premises to remove the Gateway Device and any other JCI property and to un-program any controls, intrusion, fire, or life safety system, as applicable. Customer shall be liable for all fees, costs, and expenses that JCI may incur in connection with the enforcement of this Agreement, including without limitation, reasonable attorney fees, collection agency fees, and court costs.

#### M. ASBESTOS, MOLD, BIOHAZARDS, AND HAZARDOUS MATERIALS

"Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant, or contaminant under any local, state, or federal law, regulation, or ordinance relating to or addressing public and employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold, lead-based paints, biohazards such as but not limited to Legionella and asbestos-containing materials ("ACM"). Neither Customer nor JCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of ACM.

JCI will be responsible for removing or disposing of any Hazardous Materials that it uses in providing the Services ("JCI Hazardous Materials") and for the remediation of any areas affected by the release of JCI Hazardous Materials. For other Hazardous Materials that may be present at its facilities ("Non-JCI Hazardous Materials"), Customer shall supply JCI with any information in its possession relating to the presence of Hazardous Materials if their presence may affect JCI's performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Services, it shall immediately stop the Services in the affected area and notify the other party. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of Non-JCI Hazardous Materials from its facilities and for the remediation of any areas impacted by the release of the Non-JCI Hazardous Materials and must provide a certificate of abatement before JCI will be obligated to perform or continue its Services, unless JCI had actual knowledge that Non-JCI Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) JCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Customer shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Services. Customer shall defend and indemnify JCI against any losses, costs, damages, expenses, and claims arising out of its failure to comply with this Section M.

#### N. CUSTOMER DATA

Customer data obtained from the Services is owned by and shall belong to Customer. JCI will access and use Customer data to provide Services to

Customer. Except as set forth herein, JCI will not disclose to any third party any individual Customer data acquired through performance of the Services without Customer's consent. Customer agrees that JCI and its subsidiaries, affiliates and approved third party contractors and developers may collect and use Customer data for any reason, as long as any external use of the data is on a de-identified basis that does not personally identify Customer or any individual. Customer hereby grants JCI a perpetual, worldwide, irrevocable, royalty free license to use, modify, manipulate, sublicense, and create derivative works from such data. JCI shall retain all rights to any intellectual property, data, materials and products created as a result of its performance of Services.

#### O. JCI'S INTELLECTUAL PROPERTY

JCI shall retain all right, title and interest in any (a) work provided to Customer, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto ("Deliverables"), and (b) Know-How (defined below) employed by JCI in the creation of the Deliverables or performance of the Services, whether known to JCI prior to, or developed or discovered or acquired in connection with, the performance of its obligations under this agreement. Ownership of all Deliverables and Know-How shall vest solely in JCI and no Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of JCI. For purposes of this Agreement, "Know-How" means any know-how, processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, or used by JCI in the creation or provision of the Deliverables or in the performance of the Services, and any changes, improvements, or modifications thereto or derivatives thereof.

#### P. DIGITAL ENABLED SERVICES

If JCI provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the installation and deployment of site assessment tools and the collection, transfer and ingestion of building, equipment, system time series, and other data to JCI's cloud-hosted software applications. **Customer consents to the installation and deployment of site assessment tools and the collection, transfer and ingestion and use of such data by JCI to enable JCI to provide, maintain, protect, and improve the Digital Enabled Services and JCI's products and services.** Customer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance and that JCI shall not be liable for any injury, loss or damage caused by any act of omission of JCI related to or arising from the monitoring of the equipment under the Digital Enabled Services. Certain equipment sold hereunder includes by default JCI's Connected Equipment Services. **Digital Enabled Services may be on by default and the remote connection will continue to connect to Customer's Equipment through the full equipment lifecycle unless Customer specifically requests in writing that JCI disable the remote connection or JCI discontinues or removes such remote connection.** If Customer's equipment includes Digital Enabled Services, JCI will provide a cellular modem or other gateway device ("Gateway Device") owned by JCI or Customer will supply a network connection suitable to establish a remote connection with Customer's applicable equipment to permit JCI to perform Digital Enabled Services. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using Digital Enabled Service's mobile or web application. Any Gateway Devices provided hereunder shall remain JCI's property, and JCI may upon reasonable notice access and remove such Gateway Device and discontinue services in accordance with the Software Terms. If Customer does not permit JCI to connect via a connection validated by JCI for the equipment or the connection is disconnected by Customer, and a service representative must therefore be dispatched to the Customer site, then the Customer shall pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for services performed by the service representative.

#### Q. JCI DIGITAL SOLUTIONS

**JCI Digital Solutions.** Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/techterms> (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto. Notwithstanding any other provisions of this Agreement, unless otherwise set forth in the applicable order, quote, proposal or purchase documentation, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"):

Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted in the applicable order, quote, proposal or purchase documentation. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable, and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Customer shall pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable SOW will be subject to additional fees based on the date such excess use began.

#### R. Privacy.

**1. JCI as Processor:** Where JCI factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at [www.johnsoncontrols.com/dpa](https://www.johnsoncontrols.com/dpa) ("DPA") shall apply.

**2. JCI as Controller:** JCI will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with JCI's Privacy

Notice at <https://www.johnsoncontrols.com/privacy>. Customer acknowledges JCI's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing, and transfer. To the extent consent to such collection, processing and transfer by JCI is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent

#### S. MISCELLANEOUS PROVISIONS

1. All notices required to be given hereunder shall be in writing and shall be considered properly given if: (a) delivered in person, (b) sent via the United States Postal Service, postage prepaid, registered or certified with return receipt requested, (c) sent by overnight delivery service (e.g., FedEx, UPS), or (d) sent by facsimile, email or other electronic means and confirmed by facsimile, return email or telephone.
2. This Agreement may not be assigned by Customer without JCI's prior written consent. JCI shall have the right to assign this Agreement to any other person, firm, or corporation without Customer's consent. JCI shall also have the right, in its sole discretion, to subcontract any portion of the Services. This Agreement inures to the benefit of and is applicable to any assignees or subcontractors of JCI and is binding upon Customer with respect to said assignees or subcontractors with the same force and effect as it binds Customer to JCI.
3. This Agreement shall be subject to and governed by the laws of the State where the Services are performed.
4. If any provision of this Agreement is found to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
5. This Agreement is the entire contract between JCI and Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between the parties.
6. Customer acknowledges and agrees that any purchase order issued by Customer in connection with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes and shall not be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included or referenced in Customer's purchase order will have any force or effect and these terms and conditions shall control. Customer's acceptance of any Services shall constitute an acceptance of these terms and conditions. Any proposal for additional or different terms, whether in Customer's purchase order or any other document, unless expressly accepted in writing by JCI, is hereby objected to and rejected.
7. JCI expressly disclaims any requirement, understanding or agreement, express or implied, included directly or incorporated by reference, in any Customer purchase order, solicitation, notice or otherwise, that any of JCI's personnel be vaccinated against Covid-19 under any federal, state/provincial or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"). Any such requirement shall only apply to JCI's personnel if and only to the extent contained in a written agreement physically signed by an authorized officer of JCI.
8. If there are any changes to Customer's facilities or operations, or to applicable regulations, laws, codes, taxes, or utility charges, that materially affect JCI's performance of the Services or its pricing thereof, JCI shall have the right to an equitable and appropriate adjustment to the scope, pricing, and other affected terms of this Agreement.
9. No claim or cause of action, whether known or unknown, shall be brought against JCI more than one year after the claim first arose. Except as provided for herein, JCI's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

#### ADDENDUM TO PSA TERMS AND CONDITIONS FOR MONITORING OF INTRUSION, FIRE AND OTHER SAFETY SYSTEMS

If Remote Monitoring Services explicitly includes remote fire alarm monitoring, security alarm monitoring or video monitoring in the scope of work or customer charges, the Agreement is hereby modified and amended to include the terms and provisions of this Addendum to the PSA for Monitoring of Intrusion, Fire and Safety Systems (the "Addendum"). Capitalized terms that are not defined herein, shall have the meaning given to them in the Agreement. In the event of a conflict between the terms and conditions of this Addendum and those appearing in the Agreement, the terms and conditions of this Addendum shall prevail.

1. **Remote Monitoring of Alarm Signals.** If JCI receives an emergency alarm signal at JCI's ROC, JCI shall endeavor to notify the appropriate police or fire department, or other emergency response agency having jurisdiction and JCI shall endeavor to notify Customer or its designated representative by email unless instructed to do otherwise by Customer in writing and/or based on standard operating procedures for the ROC. JCI, upon receipt of a non-emergency signal from the Premises, shall endeavor to notify Customer's representative pursuant to Customer's written instructions, defaulting to email or text notification. Customer acknowledges that if the signals transmitted from the Premises will be monitored in a monitoring facility not operated by JCI, the personnel in such monitoring facilities are not the agents of JCI, nor does JCI assume any responsibility for the manner in which such signals are monitored or the response to such signal.
2. **Remote Monitoring Services Pricing.** Remote Monitoring Services shall be provided by JCI if the Agreement includes a charge for such Service. If such Service is purchased, JCI will monitor the number of alarms for the Premises and the initial charge is based on the pricing agreed to by the parties, subject to the terms and conditions of this Addendum. If the number of alarms produced at the Premises goes beyond the contracted number of alarms in a month, Customer will be billed an overage fee.
3. **Communications Media.** Customer acknowledges that monitoring of Covered Equipment requires transmission of signals over standard telephone lines and/or the Internet and that these modes of transmission may be interrupted, circumvented, or compromised, in which case no

signal can be transmitted from the Premises to the monitoring facility. Customer understands that to allow the monitoring facility to be aware of such a condition, additional or alternative protection can be installed, such as line security devices, at Customer's cost and expense and for transmission via telephone line only. Customer acknowledges it is aware that line security devices are available and, unless expressly identified in Schedule A - Equipment List, has declined to purchase such devices. Customer further acknowledges that such additional protection is not available for Internet transmission under this Agreement.

**4. False/Unnecessary Alarms; Service Calls.** At JCI's option, an additional fee may be charged for any false alarm or unnecessary Service Visit caused or necessitated by Customer. In addition, Customer shall be fully responsible and liable for fines, penalties, assessments, taxes, fees or charges imposed by a governmental body, telephone, communication, or signal transmission company as the result of any false alarm and shall reimburse JCI for any costs incurred by JCI in connection therewith. Customer shall operate the system carefully so as to avoid causing false alarms. False alarms can be caused by severe weather or other forces beyond the control of JCI. If an undue number of false alarms are received by JCI, in addition to any other available remedies available to JCI, JCI may terminate this Agreement and discontinue any Service(s) and seek to recover damages. If an agent is dispatched, by a governmental authority or otherwise, to respond to a false alarm, where the Customer, or any other party has intentionally, accidentally, or negligently activated the alarm signal, Customer shall be responsible for and pay any and all fees and/or fines assessed with respect to the false alarms and pay to JCI the additional charges and costs incurred by it from a false alarm. If the Customer's system has a local audible device, Customer authorizes JCI to enter the Premises to turn off the audible device if JCI is requested or ordered to do so by governmental authorities, neighbors, or anyone else and Customer will pay JCI its standard service call charge for each such visit. Police agencies require repair of systems which cause false dispatches. Customer shall maintain the equipment necessary for JCI to supply the Services and Customer shall pay all costs for such maintenance. At least monthly, Customer will test the system's protective devices and send test signals to the ROC for all monitoring equipment in accordance with instructions from JCI or the ROC. Customer agrees to test the monitoring systems, including testing any ultrasonic, microwave, infrared, capacitance, or other electronic equipment prior to the end of each month and will immediately report to JCI if the equipment fails to respond to the test. Customer shall make any necessary repairs as soon after receipt of notice as is reasonably practical. Customer shall at all times be solely responsible for maintaining any sprinkler system in good working order and provide adequate heat to the Premises.

**5. Remote Monitoring of Video Monitoring Services.** During the Term, JCI's sole and only obligation arising from the inclusion of Video Monitoring Services in any Service offering shall be to monitor the digital signals actually received by JCI at its ROC from means of the Video System and upon receipt of a digital signal indicating that an alarm condition exists, to endeavor, as permitted by law, to notify the police or other municipal authority deemed appropriate in JCI's absolute discretion and to such persons Customer has designated in writing to JCI to receive notification of such alarm condition as set forth herein. No alarm installation, repair, maintenance, or guard responses will be provided under this Video Monitoring Services option. JCI may, without prior notice to Customer, in response to applicable law or insurance requirements, revise, replace, discontinue and/or rescind its response policies and procedures.

**a. Inception and conclusion of service.** Video Monitoring shall be provided by JCI if this Agreement includes a charge for Video Monitoring Services. If such Video Monitoring Service is purchased, Video Monitoring Services will begin when the Video System is installed and operational, and when the necessary communications connection is completed. No obligation for the provision of this Video Monitoring Service will commence until these requirements are met.

**b. Customer Equipment.** Customer shall obtain, at its own cost and expense: (a) the equipment necessary to connect to JCI's ROC; and (b) whatever permission, permits or licenses that may be necessary from all persons, governmental authorities, utility, and any other related service providers in connection with the Services. The video system to be used by the Customer is intended to produce and transmit video images (the "Video System Images") of the Premises to the ROC (the "Video System"). JCI makes no promise, warranty or representation that the video system will operate as intended. Customer further agrees that, notwithstanding any role or participation by JCI in Video System and Video System Images, JCI shall have no responsibility or obligation with regard to Customer, the Video System or any other Customer equipment.

**c. System Location.** The Video System related cameras shall be located and positioned by Customer along with attendant burglary digital alarm signal(s). Customer shall ensure that the Video System related cameras will be positioned and located such that it will only produce or capture Video System Images of areas of the Premises. Customer will provide adequate illumination under all operating conditions for the proper viewing of the cameras. Customer acknowledges and agrees that JCI has exercised no control over, or participated in locating or positioning the Video System related camera including, but not limited to selecting what areas, locations, things or persons that the Video System Images may depict or capture.

**d. Images.** Customer shall be solely responsible for the Video System Images produced or captured by the Video System and Customer shall defend, indemnify and hold harmless JCI and its officers, agents, directors, and employees, from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of third party claims, demands, or suits in connection with the use, operation, location and position of the Video System, and the Video System Images resulting there from, including, but not limited to, any claims of any person depicted in a Video System image, including but not limited to, any claim by such person that his or her privacy has been invaded or intruded upon or his or her likeness has been misappropriated. Any duty to obtain the consent or permission of any person depicted in a Video System Image to have his or her likeness to be depicted, received, transmitted or otherwise used, and the duty to determine and comply with any and all applicable laws, regulations, standards and other obligations that govern the legal, proper and ethical use of video capturing devices, such as the Video System, including, but not limited to, notification that the Video System is in use at the Premises, shall be the sole responsibility of the Customer. JCI agrees to make Video System Images available to Customer and upon their respective request. JCI makes no promise, warranty or representation as to the length of time that it retains Video Images, or the quality thereof.

**e. Video System Signals.** When a signal from the Video System is received, JCI reserves the right to verify all alarm signals before notifying emergency personnel and may choose not to notify emergency personnel if it has reason to believe, in its sole discretion, that an emergency condition does not exist. JCI will first attempt to verify the nature of the emergency by using visual verification and/or the two-way voice system (if applicable) of the Video System included in Customer's system. If JCI determines that an emergency condition exists, JCI will endeavor to notify the proper police or emergency contact on a notification call list provided in writing by Customer to JCI,

or its designee. When a non-emergency signal is received, JCI will attempt to contact the first available Customer representative on the notification call list but will not notify emergency authorities, this notification will be in the form of email or text and follow ROC processes. If the customer requires phone calls to the call list for any emergency or non-emergency situation, the customer will need to make this request in writing. Customer authorizes and directs JCI, as its agent, to use its full discretion in causing the arrest or detention of any person or persons on or around the premises who are not authorized by Customer. **JCI WILL NOT ARREST OR DETAIN ANY PERSON.**

f. **Recordings.** Customer consents to the tape recording of all telephonic communications between the Premises and JCI. JCI will have no liability arising from recording (or failure to record) or publication of any two-way voice communications, other video recordings or their quality. JCI shall have no liability in connection with Video System or the Video System Images, including, but not limited to, any failure, omission, negligence, or other act by JCI, or any of its officers, employees, representatives, agents, contractors, or any other third party in connection with the receipt (or failure of receipt), transmission, reading, interpreting, or response to any Video Image.

6. **Risk of Loss is Customer's.** JCI does not represent or warrant that the Services will prevent any loss by burglary, holdup, fire or otherwise, or that the Services will in all cases provide the protection for which it is installed or intended, or that the Services will be uninterrupted or error-free. Customer assumes all risk of loss or damage to the Premises being monitored and to its contents, whether belonging to Customer or others; and has not relied on any representations and warranties of JCI, express or implied, except as specifically set forth in this Agreement. Further, expressly excluded from this Agreement are the warranties of merchantability or fitness or suitability for a particular purpose.

7. **JCI'S RECEIPT OF ALARM SIGNALS, ELECTRONIC DATA, VOICE DATA, OR IMAGES (COLLECTIVELY, "ALARM SIGNALS") FROM THE EQUIPMENT OR SYSTEM INSTALLED IN THE PREMISES IS DEPENDENT UPON PROPER TRANSMISSION OF SUCH ALARM SIGNALS.** JCI'S ROC CANNOT RECEIVE ALARM SIGNALS WHEN THE CUSTOMER'S TELCO SERVICE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH, OR IS OTHERWISE DAMAGED, OR IF THE ALARM SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELCO SERVICE OR TRANSMISSION MODE FOR ANY REASON INCLUDING BUT NOT LIMITED TO NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY. CUSTOMER UNDERSTANDS THAT SIGNAL TRANSMISSION FAILURE MAY OCCUR OVER CERTAIN TYPES OF TELCO SERVICES SUCH AS SOME TYPES OF DSL, ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR, WIRELESS OR PRIVATE RADIO, OR CUSTOMER'S PROPRIETARY TELCOMMUNICATION NETWORK, INTRANET OR IP-PBX, OR OTHER THIRD-PARTY EQUIPMENT OR VOICE/DATA TRANSMISSION NETWORKS OR SYSTEMS OWNED, MAINTAINED OR SERVICED BY CUSTOMER OR THIRD PARTIES, IF: (1) THERE IS A LOSS OF NORMAL ELECTRIC POWER TO THE MONITORED PREMISES OCCURS (THE BATTERY BACK-UP FOR JCI'S ALARM PANEL DOES NOT POWER CUSTOMER'S COMMUNICATION FACILITIES OR TELCO SERVICE); OR (2) ELECTRONIC COMPONENTS SUCH AS MODEMS MALFUNCTION OR FAIL. CUSTOMER UNDERSTANDS THAT JCI WILL ONLY REVIEW THE INITIAL COMPATIBILITY OF THE ALARM SYSTEM WITH CUSTOMER'S TELCO SERVICE AT THE TIME OF INITIAL INSTALLATION OF THE ALARM SYSTEM AND THAT CHANGES IN THE TELCO SERVICE'S DATA FORMAT AFTER JCI'S INITIAL REVIEW OF COMPATIBILITY COULD MAKE THE TELCO SERVICE UNABLE TO TRANSMIT ALARM SIGNALS TO JCI'S ROC. IF JCI DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S TELCO SERVICE IS COMPATIBLE, JCI WILL PERMIT CUSTOMER TO USE ITS TELCO SERVICE AS THE PRIMARY METHOD OF TRANSMITTING ALARM SIGNALS, ALTHOUGH CUSTOMER UNDERSTANDS THAT JCI RECOMMENDS THAT CUSTOMER ALSO USE AN ADDITIONAL BACK-UP METHOD OF COMMUNICATION TO CONNECT CUSTOMER'S ALARM SYSTEM TO JCI'S ROC REGARDLESS OF THE TYPE OF TELCO SERVICE USED. CUSTOMER ALSO UNDERSTANDS THAT IF JCI DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S TELCO SERVICE IS, OR LATER BECOMES, NON-COMPATIBLE, OR IF CUSTOMER CHANGES TO ANOTHER TELCO SERVICE THAT IS NOT COMPATIBLE, THEN JCI WILL REQUIRE THAT CUSTOMER USE AN ALTERNATE METHOD OF COMMUNICATION ACCEPTABLE TO JCI AS THE PRIMARY METHOD TO CONNECT CUSTOMER'S ALARM SYSTEM TO JCI'S ROC. JCI WILL NOT PROVIDE FIRE OR SMOKE ALARM MONITORING FOR CUSTOMER BY MEANS OTHER THAN AN APPROVED TELCO SERVICE AND CUSTOMER UNDERSTANDS THAT IT IS SOLELY RESPONSIBLE FOR ASSURING THAT IT USES APPROVED TELCO SERVICE FOR ANY SUCH MONITORING AND THAT IT COMPLIES WITH NATIONAL FIRE ALARM STANDARDS AND LOCAL FIRE CODES. CUSTOMER ALSO UNDERSTANDS THAT IF CUSTOMER'S ALARM SYSTEM HAS A LINE CUT FEATURE, IT MAY NOT BE ABLE TO DETECT ALARM SIGNALS IF THE TELCO SERVICE IS INTERRUPTED, AND THAT JCI MAY NOT BE ABLE TO DOWNLOAD SYSTEM CHANGES REMOTELY OR PROVIDE CERTAIN AUXILIARY MONITORING SERVICES THROUGH A NON-APPROVED TELCO SERVICE. CUSTOMER ACKNOWLEDGES THAT ANY DECISION TO USE A NON-APPROVED TELCO SERVICE AS THE METHOD FOR TRANSMITTING ALARM SIGNALS IS BASED ON CUSTOMER'S OWN INDEPENDENT BUSINESS JUDGMENT AND THAT ANY SUCH DECISION IS MADE WITHOUT ANY ASSISTANCE, INVOLVEMENT, INPUT, RECOMMENDATION, OR ENDORSEMENT ON THE PART OF JCI. CUSTOMER ASSUMES SOLE AND COMPLETE RESPONSIBILITY FOR ESTABLISHING AND MAINTAINING ACCESS TO AND USE OF THE NON-APPROVED TELCO SERVICE FOR CONNECTION TO THE ALARM MONITORING EQUIPMENT. CUSTOMER FURTHER UNDERSTANDS THAT THE ALARM SYSTEM MAY BE UNABLE TO SEIZE THE TELCO SERVICE TO TRANSMIT AN ALARM SIGNAL IF ANOTHER CONNECTION HAS DISABLED, IS INTERFERING WITH, OR BLOCKING THE CONNECTION.

#### CUSTOMER ACCEPTANCE

In accepting this Agreement, Customer agrees to the terms and conditions contained herein including those on the following page(s) of this Agreement and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that Customer may issue. Any changes requested by Customer after the execution of this Agreement shall be paid for by the Customer and such changes shall be authorized in writing. **ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS CONTAINED IN THIS AGREEMENT.**

Pricing is based upon the following billing and payment terms: Invoices will be delivered via email, payment due date of NET 30, and invoices are to be paid via ACH bank transfer. Johnson Controls ACH/EFT bank transfer details will be forthcoming upon contractual agreement.

This offer shall be void if not accepted in writing within thirty (30) days from the date first set forth above.

[END OF DOCUMENT]



# **Fargo Fire Department**

## MEMORANDUM

12

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: JANUARY 27, 2023**

**SUBJECT: FIRE DEPARTMENT PERMIT FEES**

The Fargo Fire Department reviews the fire permit fees coinciding with fire code adoption. The city commission recently adopted the 2021 International Fire Code. I am recommending an increase in fire permit fees to begin on March 1, 2023. The updated permit fee schedule is being submitted for your approval.

### **Suggested Motion:**

Approve the request for an increase of fire permit fees to the fire permit fee schedule as proposed.

Fargo Fire Department			
Permit Fee Schedule for 2021 IFC		Current	Proposed
Annual Operational Permits	code	Fee	Fee
105.5.2 Aerosol products 5101.2	AER	\$ 60.00	\$ 65.00
105.5.3 Amusement Buildings	AMB	\$ 60.00	\$ 65.00
105.5.4 Aviation Facilities 2001.3	AVF	\$ 60.00	\$ 65.00
105.5.5 Carnivals and Fairs	CAR	\$ 60.00	\$ 65.00
105.5.6 Cellulose nitrate film 301.2	CNF	\$ 60.00	\$ 65.00
105.5.7 Combustible dust-producing operations 2201.2	CDO	\$ 60.00	\$ 65.00
105.5.8 Combustible Fibers 3701.3	CF	\$ 60.00	\$ 65.00
105.5.9 Compressed Gases 5301.2	CG	\$ 60.00	\$ 65.00
105.5.10 Covered and open mall buildings with open flames	CMB	\$ 60.00	\$ 65.00
105.5.11 Cryogenic fluids 5501.2	CRY	\$ 60.00	\$ 65.00
105.5.12 Cutting and Welding 3501.2	CW	\$ 60.00	\$ 65.00
105.5.13 Dry Cleaning w/hazardous solvent 2101.2	DC	\$ 60.00	\$ 65.00
105.5.16 Explosives 5601.2	EXP	\$ 60.00	\$ 65.00
105.5.17 Fire hydrants and valves 501.2	HYD	\$ 60.00	\$ 65.00
105.5.18 Flammable and combustible liquids 5701.4	FL	\$ 60.00	\$ 65.00
105.5.20 Fruit and crop ripening 2501.2	FR	\$ 60.00	\$ 65.00
105.5.21 Fumigation and insecticidal fogging 2601.2	FU	\$ 60.00	\$ 65.00
105.5.22 Hazardous materials 5001.5	HM	\$ 120.00	\$ 130.00
105.5.23 HPM facilities 2701.5	HPM	\$ 120.00	\$ 130.00
105.5.24 High piled storage (exceeding 500sf) 3201.2	HPS	\$ 60.00	\$ 65.00
105.5.25 Hot Work operations 3501.2	HW	\$ 60.00	\$ 65.00
105.5.26 Industrial Ovens 3001.2	IO	\$ 60.00	\$ 65.00
105.5.27 Lumber yards and woodworking plants (>100,000 bf) 2801.2	LYW	\$ 60.00	\$ 65.00
105.5.28 Liquid or gas fueled vehicles or equipment in assembly buildings	LGV	\$ 60.00	\$ 65.00
105.5.29 LP-gas 6101.2	LPG	\$ 60.00	\$ 65.00
105.5.30 Magnesium (>10lbs) 5901.2	MA	\$ 60.00	\$ 65.00
105.5.34 Open burning 307.2	BF	\$ 60.00	\$ 65.00
105.5.35 Open flames and torches 308.2	TOF	\$ 60.00	\$ 65.00
105.5.36 Open flames and candles 301.2	COF	\$ 60.00	\$ 65.00
105.5.37 Organic coatings 2901.2	OC	\$ 60.00	\$ 65.00
105.5.39 Places of assembly	PA	\$ 60.00	\$ 65.00
105.5.41 Private Fire hydrants	PFH	\$ 60.00	\$ 65.00
105.5.42 Pyrotechnic special effects materials 5601.2	PYR	\$120 + \$85/hr min. 2hrs**	\$130 + \$92/hr min. 2hrs**
105.5.43 Pyroxylin plastics 6501.2	PXP	\$ 60.00	\$ 65.00
105.5.44 Refrigeration equipment 608.2	MR	\$ 60.00	\$ 65.00
105.5.45 Repair Garages 2301.2	MVR	\$ 60.00	\$ 65.00
105.5.46 Rooftop Heliports 2007	RTH	\$ 60.00	\$ 65.00
105.5.47 Spraying or dipping 2401.3	SP	\$ 60.00	\$ 65.00
105.5.48 Storage of scrap tires and tire byproducts 3401.2	SST	\$ 60.00	\$ 65.00
105.5.49 Temporary membrane structures and tents 3103.4	TAS	\$ 60.00	\$ 65.00
105.5.50 Tire rebuilding plants 3401.2	TRP	\$ 60.00	\$ 65.00
105.5.51 Waste Handling	WH	\$ 60.00	\$ 65.00
105.5.52 Wood Products 2801.2	WP	\$ 60.00	\$ 65.00



Construction Permits		
105.6.1 Automatic fire-extinguishing systems	\$85 + (\$1x0.1%(Total Fire Flow Calculation Area))	\$92 + (0.1%(Total Fire Flow Calculation Area))
105.6.3 Cryogenic fluids	\$85 + (0.1%(Project cost))	\$92 + (Tank Fee Schedule)
105.6.4 Emergency Responder radio coverage system	\$85 + (0.1%(Project cost))	\$92 + (0.1%(Project cost))
105.6.6 Fire alarm and detection system and related equipment	\$85 + (\$1x0.1%(Total Fire Flow Calculation Area))	\$92 + (0.1%(Total Fire Flow Calculation Area))
105.6.8 Flammable and combustible liquids	\$85 + (1%(Project cost))	\$92 + (Tank Fee Schedule)
105.6.9 Fuel cell power systems	\$85 + (1%(Project cost))	\$92 + (0.1%(Project cost))
105.6.14 Industrial Ovens	\$85 + (0.1%(Project cost))	\$92 + (0.1%(Project cost))
105.6.15 LP-gas	\$85 + (0.1%(Project cost))	\$92 + (Tank Fee Schedule)
105.6.22 Spraying or dipping	\$85 + (0.1%(Project cost))	\$92 + (0.1%(Project cost))
**Fees Double when work has begun prior to permit issuance.		
Tank Fee schedule		
Tank fee is added to the base fee for the construction permit specified above.		
Tank Size		
0 - 1,000 gallon		\$150 per tank
1,001 - 5,000 gallon		\$300 per tank
5,001 - 12,000 gallon		\$400 per tank
12,001 - 20,000 gallon		\$500 per tank
20,001 - +		\$600 per tank
Each dispenser with sump		\$200 each
Cost includes plan review and inspection during normal business hours		
***Inspections outside of normal business hours (minimum charge - two hours) - \$92 per hour		

2021 International Fire Code as adopted by City of Fargo

# **Fargo Fire Department**

## MEMORANDUM

13

**TO: FARGO CITY COMMISSION**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: FEBRUARY 2, 2022**

**SUBJECT: FIRE DEPARTMENT PIGGY BACK PURCHASE**

The fire department has a process to rotate our structural firefighting gear. For 2023, the department is anticipating the need to purchase gear for 14 new employees and 21 current employees. Five years ago, the department completed an extensive evaluation of structural turnout gear available. At the conclusion of the evaluation it was determined that Innotex Energy provided the best protection and value.

For the past several years, we have been purchasing our gear through the Sourcewell cooperative purchasing agreement. There is only one local vendor that is authorized to sell Innotex Energy products, Great Plains Fire Equipment. The Sourcewell price sheet indicates that we will receive a 20% discount from MSRP.

**RECOMMENDATION:** Authorize the Fire Department a piggyback purchase of 35 sets of structural firefighting turnout gear through the Sourcewell Cooperatives Purchasing agreement in the amount of \$124,810.00 (PBC032620-INO).

	<h2 style="text-align: center;">Sole Source and Piggyback Procurement Form</h2>
---	---

**Sole Source and Piggyback Justification for Procurement**

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Great Plains Fire Equipment / Innotex
---------------------------------------

Estimated Dollar Amount of Purchase:

124,810.00
------------

Is this procurement funded by a federal grant?

No
----

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

Outfit 35 firefighters in new Innotex turnout coats and pants throughout this year. Purchased through Sourcwell cooperative purchasing with Great Plains being the vendor.
--

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Five years ago the FFD did an extensive evaluation of turnout gear, at that time it was determined that Innotex Energy turnout gear was the best fit and offered the best protection for our firefighters. It has an airflow channel in the back of the coat that allows air to move through the coat without compromising protection from heat and cancer causing product of combustion. The turnout pants have multiple different cuts to allow a better fit for firefighters along with boot gators attached to the liners of the pants to stop cancer causing agents from flowing up the pants legs.

**Provide a brief description of how your investigation was conducted.** (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. \*\*)

I used the internet to look at dealers that could deliver Innotex turnout gear to us and found that Great Plains was the assigned dealer in this area. We have used Great Plains in the past to supply Innotex bunker gear. As in past years I was in contact with the Innotex regional sales manager and was again informed that we would get the best pricing by using Sourcewell cooperative purchasing.


**\*\*If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

--

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

This is a piggyback procurement on Sourcewells cooperative purchasing which the City of Fargo is a member of. The contract can be looked up on Sourcewells site and is contract #032620-INO. I did attach Sourcewells pricing sheet that shows a 20% discount from MSRP.

Signature:   
(Requestor)

Printed Name: Lee Soeth

Department: Fire

Title: Battalion Chief

Date: 1/20/2023

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

LMS (Requestor initials)



**INNOTEX® #032620-INO**

Pricing for contract #032620-INO is provided at 20% discount from MSRP price list to Sourcewell participating agencies.



INFORMATION SERVICES

225 4<sup>th</sup> St N

FARGO, ND 58102

PHONE: 701-476-6700

FAX: 701-241-8253

14

January 24, 2023

Honorable Board of  
City Commissioners  
City of Fargo  
200 N 3<sup>rd</sup> St. S  
Fargo, ND 58102

Dear Commissioners;

In the spring of 2023, the State of North Dakota and Corps of Engineers has contracted with Fugro USA Land, Inc. to fly the entire state for Digital Orthophotography, LiDAR/Contours, Planimetrics and Impervious Surfaces. These are the aerial photos and elevation data that are used in our GIS system.

Every three years, the City updates our imagery and elevation data. This year, 2023, is a year that we plan to update our imagery.

Our project requirements are slightly more detailed than the State requirements. We have requested to add our project requirements to the upcoming State project. The attached agreement reflects the costs to add our additional project requirements to the State agreement for the flight. This is a substantial discount to having our flights as a standalone project.

The total cost for this project will be \$196,000. These costs will be split amongst the following entities:

Fargo	\$31,449.63	Clay	\$5,442.71
Moorhead	\$18,323.83	Cass	\$3,786.43
West Fargo	\$6,600.88	Diversion	\$130,396.52

This project has been approved by the Finance Committee and the contract has been reviewed by the City Attorney.

Thank you,

A handwritten signature in black ink that reads "Ron Gronneberg".

Ron Gronneberg  
CIO, City of Fargo





**INFORMATION SERVICES**

225 4<sup>th</sup> St N

FARGO, ND 58102

PHONE: 701-476-6700

FAX: 701-241-8253

January 24, 2023

Honorable Board of  
City Commissioners  
City of Fargo  
200 N 3<sup>rd</sup> St. S  
Fargo, ND 58102

Dear Commissioners;

We have maintained a cyber insurance contract with AIG for the last 4 years.

The policy we maintain with AIG provides several Loss Prevention Services. The services enable us to enhance our cyber posture.

AIG has partners and vendors that AIG has pre-approved for help with Breach and Privacy Counsel services. These services will be needed, if we ever have a significant data breach happen in the City.

Rather than wait until a breach incident has happened, we would like to establish a relationship with one of these partners to help us during the post-breach incident processes. After interviewing several of these partners, we have determined that Mullen Coughlin would be the best firm to help us with the post-breach processes.

The attached agreement will set up this agreement for services with Mullen Coughlin, should we ever need their services. There is no cost to retain their services until we actually need their services. If we do have a breach, since they are already on the AIG pre-approved partner list, we expect their services will be fully covered under our cyber insurance agreement.

Thank you,

A handwritten signature in black ink that reads "R M Gronneberg".

Ron Gronneberg  
CIO, City of Fargo



MULLEN  
COUGHLIN<sub>LLC</sub>  
ATTORNEYS AT LAW

John F. Mullen  
Office: 267-930-4791  
Fax: 267-930-4771  
Email: [jmullen@mullen.law](mailto:jmullen@mullen.law)

426 W. Lancaster Avenue, Suite 200  
Devon, PA 19333

December 30, 2022

**VIA ELECTRONIC MAIL**

Dr. Tim Mahoney  
Mayor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
Email:

Attn: Steve Sprague  
City Auditor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
E-mail: [SSprague@FargoND.gov](mailto:SSprague@FargoND.gov)

**Re: The City of Fargo, ND - Engagement**

Dear Steve Sprague and Dr. Tim Mahoney:

Thank you for your interest in retaining Mullen Coughlin LLC as your attorneys. The purpose of this correspondence is to establish the terms and conditions of future representation of The City of Fargo, ND, a North Dakota Municipal Corporation ("You") by Mullen Coughlin LLC ("Mullen Coughlin" or "the Firm"), including but not limited to the financial terms. This correspondence may be referred to as "Terms of Engagement" or the "Agreement."

If You engage us in connection with a claim submitted to an insurance carrier, the insurance policy may provide that, among other things, You may be responsible for a Self-Insured Retention ("SIR").

Please read the Terms of Engagement with care. By accepting these Terms, You are agreeing that they will be incorporated by reference into any future representation of You by the Firm.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 2 of 12

1. PARTIES TO THE TERMS OF ENGAGEMENT

The parties are Mullen Coughlin and You. No other person or entity shall be entitled to claim an attorney-client relationship with the Firm with respect to the legal services to be provided pursuant to the terms of the Agreement.

2. INCEPTION OF ATTORNEY CLIENT RELATIONSHIP

The information that was shared with us during our initial period of consultation with You was shared within a representation limited to the consultation. That attorney-client relationship was finite. It does not continue to exist, and Mullen Coughlin is not obligated to provide legal services described, until You have returned a signed copy of this Agreement and an Acknowledgement Letter describing a specific undertaking by the Firm to provide representation.

3. SCOPE OF REPRESENTATION: ACKNOWLEDGEMENT LETTERS

Mullen Coughlin will perform only those legal services set forth in separate Acknowledgment Letters, a sample form of which is attached as Exhibit A. You agree that You have no expectation that the Firm will provide legal services beyond those set forth in an Acknowledgement Letter, unless Mullen Coughlin and You amend the Terms of Engagement in writing or execute a separate agreement with respect to any such additional legal services. When services set forth in Acknowledgement Letters are completed, our representation of You shall end. When no services are being performed pursuant to an Acknowledgment Letter, You will be considered a former client for purposes of conflicts of interests. The attorney-client relationship will resume upon execution of the next Acknowledgment Letter. Nothing in this Section shall in any way limit Your obligation to pay for, or the Firm's right to receive payment for any services provided by the Firm at Your request.

4. INFORMATION RETENTION

You are generally required by law to retain documents, including electronically stored information ("ESI"), which may be relevant to a legal matter which is the subject of a representation. Preservation of documents including ESI is Your responsibility, and it is important that You take all necessary and reasonable steps to preserve this information. The Firm is available to discuss the scope of Your obligations and to provide advice or recommendations in this regard.

5. DUTIES OF CLIENT/YOU

You agree to provide Mullen Coughlin with complete and accurate information and documents, cooperate, keep us informed of relevant developments, abide by the Terms of Engagement, any applicable Acknowledgment Letter and pay our statements on time. In addition, You will advise us of any changes to Your address or other contact information as well as any change of applicable insurer.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 3 of 12

6. LEGAL FEES

We will charge You for the services provided pursuant to the Terms of Engagement and Acknowledgment Letters based on the amount of time (including travel) we devote to the matter at the prevailing hourly rates for the particular professionals. For claims which You submit to an insurance carrier, our rates are subject to change in the future, but will always reflect our then-current preferred rates with your insurance carrier only. Rates applying to any specific engagement will be provided to you in an Acknowledgment Letter. We reserve the right to reasonable annual rate increases, subject to Your consent, which shall not be unreasonably withheld.

We bill in minimum units of 6 minutes, or .1 hour. We reserve the right to staff the handling of the matter with the partners, associates, paralegals and/or other personnel of our choice, at the rate we establish for each such timekeeper, although we will discuss the staffing of Your matter with You at any time and consider Your input in the staffing of the matter.

7. COSTS, EXPENSES AND OTHER CHARGES

a. COSTS AND EXPENSES: EXHIBIT C

We will incur on Your behalf various costs and expenses in performing legal services under the Terms of Engagement and Acknowledgment Letters. You agree to pay for those costs and expenses in addition to the hourly fees. Exhibit C, attached, includes a non-exhaustive list of costs we may incur on Your behalf.

b. OUTSIDE CONSULTANTS/OTHER VENDORS

In addition to costs of the type set forth in Exhibit C, it may become necessary to hire persons or entities outside Mullen Coughlin, including but not limited to consultants, forensics and other experts, investigators, or other professional service providers. We will select any consultants or investigators to be hired after notice to and consultation with You, and You agree to honor the terms and conditions of any agreement with any such outside person or entity that we enter into on Your behalf and with Your consent.

c. REIMBURSEMENT OR DIRECT PAY

We reserve the right in our sole discretion to either pay directly any of the costs incurred such as those set forth in Exhibit C, and/or for outside consultants or other vendors, or to ask You to pay any such expense directly. If we pay costs directly You agree to reimburse us as stated in Section 8. If we exercise our right to require You to pay an outside vendor invoice directly, and You fail to do so, Mullen Coughlin will make payment and seek from You payment and any damages established. Payment directly by the Firm of any such expense shall not be construed as a waiver of our right to require You in the future to pay any similar expense directly.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 4 of 12

8. PERIODIC STATEMENTS AND BILLING TERMS

Our practice is to send periodic statements for services rendered and for costs incurred during the previous month or months. The detail in the periodic statement will inform You of both the nature and progress of work and of the fees and costs being incurred.

Our fee structure is based upon Your promise to pay all statements no later than 30 days after receipt.

We do our best to see that our clients are satisfied not only with our services, but also with the reasonableness of the fees and costs. While we urge You to raise any question about or objection to a fee statement, You must do so promptly.

In the event You fail to pay any invoice within thirty (30) days of the statement date, You agree to pay interest at the maximum rate allowed by law on the amount of such invoice, from the statement date until paid in full. If we accept late payment of any invoice without interest, we shall not be deemed to have waived any claim in the future for interest on other invoices. If You timely object in writing to a portion of a statement, You agree to pay the remainder of the statement which is not in dispute. We agree to accept such partial payment without claiming You have waived Your right to contest the unpaid portion of the bill.

Failure to pay the undisputed amount of any invoice in full within 30 days shall constitute grounds for termination of this Agreement and withdrawal of the Firm from representation, as more fully discussed in Section 11.

9. RETAINER: SECURITY AND ADVANCE PAYMENT OF FINAL INVOICE

We are not requesting any retainer at this time, but we reserve the right, within the bounds of our ethical and legal duties, to cease work and request a retainer at any time for reasons such as, but not limited to, failure to pay Firm invoices or exhaustion of insurance policy limits. The following terms apply to any retainer paid to the Firm during the course of any representation.

A retainer is: 1) a sum to be held as security for the Firm with respect to Your obligations to pay the fees and costs incurred by the Firm pursuant to the Terms of Engagement and any Acknowledgement Letter; and 2) an advance payment to be applied to the Firm's final invoice in this matter. We expect that You will live up to the terms and conditions of the Terms of Engagement in full, in which case the full amount of the remaining retainer will be applied against the final invoice and any excess returned to You. However, should You become delinquent on the payment of any invoice, we may in our discretion apply the retainer to the payment of that statement. In that event, You shall immediately restore the retainer to its full amount upon our request. Failure to deliver or restore the retainer upon our request shall constitute grounds for termination of this Agreement and withdrawal from any representation under an Acknowledgement Letter, as more fully discussed in Section 11.

We also reserve the right to require, and You agree to provide, increases to the retainer should the time and expense required to carry out the representation contemplated by the Terms of

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 5 of 12

Engagement and an Acknowledgment Letter increase beyond that reasonably anticipated at the beginning of the engagement. In the event that our representation of You encompasses litigation, we reserve the right to increase the retainer, based on estimated time and costs, in the event that we must engage in trial preparation or trial.

10. TERMINATION OF THE FIRM BY YOU

You shall have the right to terminate this Agreement and discharge the Firm at any time. However, to be effective, termination or discharge of the Firm must be in writing. In such event, You authorize the Firm to make and retain a duplicate of Your file.

You shall bear all reasonable costs of transferring the new matter to counsel chosen by You.

The attorney/client relationship between the Firm and You shall end upon discharge of the Firm by You pursuant to this Section. However, such discharge shall not relieve You of any obligation to pay fees and costs incurred prior to the discharge, as well as any fees and costs expended after the discharge to the extent reasonably required in the Firm's sole discretion to protect Your interests or in the event of litigation, until a court order is entered permitting the Firm to withdraw.

11. WITHDRAWAL FROM REPRESENTATION BY THE FIRM

The Firm shall be permitted to withdraw from representation whenever required or permitted to do so by law. In addition, the Firm may withdraw as counsel at any time if withdrawal can be accomplished without material adverse effects on the interests of You, or if: 1) You persist in a course of action involving a lawyer's services that the lawyer reasonably believes to be criminal or fraudulent; 2) You have used the lawyer's services to perpetrate a crime or fraud; 3) You insist upon pursuing an objective that the lawyer considers repugnant or imprudent; 4) You fail substantially to fulfill an obligation to Mullen Coughlin regarding the Firm's services (including, but not limited to, Your financial obligations under these Terms of Engagement) after reasonable warning from the lawyer that the lawyer will withdraw unless the obligation is fulfilled; 5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by You; or 6) where other good cause for withdrawal exists.

12. DOCUMENT RETENTION POLICY

If, during the course of a representation, You provide the Firm with Personally Identifiable Information ("PII") or Protected Health Information ("PHI"), You should retain a copy of what was sent to us. We may not incorporate PII or PHI into Your Mullen Coughlin file or preserve it as part of Your file. PII or PHI may be held by us in a manner distinct from Your file and may be eliminated from our records as soon as the need for it has been satisfied. This may mean that it will be deleted even while Your matter is on-going. If the PII or PHI is required again we will make another request. **The copy that You retain may be the only copy available in the future.** It should be preserved as required by law including any applicable litigation holds.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 6 of 12

On termination of a matter, the Firm will maintain file documents for 6 years, or any alternate period as determined by the Commonwealth of Pennsylvania. Upon termination of the matter, You have the right to take possession of the file. If You choose to take possession of the file, the Firm may copy all or any part of the file. If You choose not to take possession of the file, the Firm will retain the file pursuant to its document storage policy stated above.

13. CHOICE OF LAW/FORUM SELECTION

These Terms of Engagement are deemed to have been executed in North Dakota. Any dispute arising from this Agreement shall be governed by the laws of North Dakota.

14. NO PROMISES OR GUARANTEES

You understand that Mullen Coughlin has not and will not make promises or guarantees concerning the outcome of any representation or matter set forth in the Acknowledgement Letters.

15. RIGHT TO SEPARATE COUNSEL

You acknowledge having had the opportunity to seek the advice of separate counsel with respect to this Agreement.

16. LEGAL MALPRACTICE INSURANCE

As of the date of this letter, Mullen Coughlin has errors and omissions (legal malpractice) insurance applicable to the services to be rendered pursuant to this Agreement and subsequent Acknowledgement Letters, subject to any applicable deductible or SIR.

17. MODIFICATION IN WRITING ONLY

No change to this Agreement shall be effective unless and until confirmed in writing and signed and acknowledged by the Firm and You making express reference to this Agreement. The Terms of Engagement together with an Acknowledgement Letter will embody the whole agreement of the parties with respect to any representation undertaken by the Firm. There are no promises, terms, conditions or obligations other than those contained herein, and this agreement shall supersede all previous communications, representations, or other agreements, either oral or written, between the Firm and You.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 7 of 12

18. COUNTERPARTS AND FACSIMILES EFFECTIVE

This Terms of Engagement may be signed in counterpart. Facsimile or imaged signature pages executed by the Firm or You shall be effective as original signatures.

Thank You for choosing Mullen Coughlin as Your counsel.

We look forward to working with You and thank You once again for the opportunity to serve You.

Dated: \_\_\_\_\_

Accepted and agreed to:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

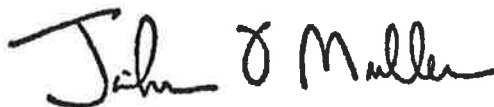
Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Mullen". The signature is fluid and cursive, with the first name "John" being more prominent.

John F. Mullen of  
MULLEN COUGHLIN LLC

JFM:eeb



Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 8 of 12

EXHIBIT "A":  
Sample Incident Response Acknowledgement Letter

**VIA ELECTRONIC MAIL**

Dr. Tim Mahoney  
Mayor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
Email:

Attn: Steve Sprague  
City Auditor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
E-mail: SSprague@FargoND.gov

**Re: Acknowledgement of New Assignment**

Dear Steve Sprague and Dr. Tim Mahoney:

This Acknowledgement Letter is issued pursuant to the terms of the Terms of Engagement between The City of Fargo, ND ("You") and Mullen Coughlin LLC ("Mullen Coughlin"), dated December 30, 2022 ("Terms of Engagement") which are incorporated by reference as though fully set forth at length.

We are requesting a \$xx retainer for this Acknowledgment Letter. A description of the terms related to any retainer paid to the Firm during the course of any representation can be found in Section 9 of the Serial Engagement letter. Pursuant to the terms of the Terms of Engagement, Mullen Coughlin will perform the following scope of work.

**Scope of Work**

[Insert Scope of Work description for relevant matter].

You have made an insurance claim with [CARRIER] for this matter. The claim number associated with this incident is [CLAIM NUMBER]. The Insurance Policy provided through [CARRIER] provides that, among other things, Company may be responsible for a Self-Insured Retention ("SIR") in the amount of \$[SIR AMOUNT].

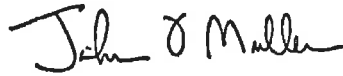
**Incident Response Engagements - Hourly rates for legal personnel based on the date of execution of the Acknowledgement Letter are as follows:**

\$[X] Partner  
\$[X] Associate  
\$[X] Paralegal

Kindly indicate your agreement by signing below and returning an executed copy.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 9 of 12

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Mullen". The signature is fluid and cursive, with the first name "John" being more prominent.

John F. Mullen of  
MULLEN COUGHLIN LLC

Accepted:

Date: \_\_\_\_\_

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 10 of 12

EXHIBIT "B":  
Sample Advisory Compliance Acknowledgement Letter

**VIA ELECTRONIC MAIL**

Dr. Tim Mahoney  
Mayor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
Email:

Attn: Steve Sprague  
City Auditor  
The City of Fargo, ND  
225 4th Street North  
Fargo, ND 58102  
E-mail: SSprague@FargoND.gov

**Re: Acknowledgement of New Assignment**

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**Scope of Work**

[Insert Scope of Work description for relevant matter].

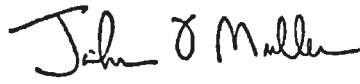
**Advisory Compliance Case Staffing**

This matter will be billed at rates of \$xx/hour for Partners and \$xx/hour for Associates, reflecting our reduced hourly rates for pre-breach/compliance work for clients with cyber insurance. Generally, document review and drafting of deliverables will initially be performed by an Associate, with a Partner overseeing and guiding the handling of the entire engagement, and collaborating on, reviewing, and approving all deliverables sent to You. At least one Associate and one Partner will participate in calls with You. We will work with You and coordinating international counsel regarding global data privacy and information security laws, as necessary, in the event of material compliance matters and/or data security events implicating such laws.

Kindly indicate your agreement by signing below and returning an executed copy.

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 11 of 12

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Mullen". The signature is fluid and cursive, with the first name "John" being more prominent.

John F. Mullen of  
MULLEN COUGHLIN LLC

Accepted:

\_\_\_\_\_  
Date: \_\_\_\_\_

Steve Sprague and Dr. Tim Mahoney  
December 30, 2022  
Page 12 of 12

EXHIBIT "C"

RATE SCHEDULE AND COST/EXPENSE ITEMS SCHEDULE

**A. Identification**

Client(s): The City of Fargo, ND, a North Dakota Municipal Corporation

Matter: See Acknowledgement Letters

**B. Controlling hourly rates for legal personnel will be set forth in Acknowledgement Letter.**

**C. Standard charges**

We charge for our time in minimum units of .1 hours (6 minutes).

**D. Costs and expenses incurred on Your behalf may include but are not limited to:**

Travel expenses including e.g., lodging, airfare, taxis, public transportation, car rental, parking and meals	At cost
Deposition costs	At cost
Postage, messenger and other delivery fees	At cost
Mileage	At the Internal Revenue Service's business mileage reimbursement guidelines
Photocopying and other reproduction costs	In-house - \$0.10 per page Outside service - At cost
After hours building services (when dictated)	At cost by special client need



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## Memorandum

DATE: February 6, 2023  
TO: Mayor and Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building at 427 23<sup>rd</sup> St S

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### Background:

The property at 427 23<sup>rd</sup> St S., Fargo was declared a Dangerous Building during the regular meeting of the City Commission on August 22, 2022. On December 30, 2022 the property was sold to Guy Thomas by Cascade Funding Mortgage Trust. The new and current owner would like to cure the deficiencies to this property.

**RECOMMENDED MOTION:** To direct the City Attorney's Office to amend the Findings of Fact, and Conclusions and Order contingent on an agreement between the current owner (Guy Thomas) and the city to allow the rehabilitation of the home no later than September 1, 2023.



17

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## Memorandum

DATE: February 6, 2023  
TO: Mayor and Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building at 924 5<sup>th</sup> St S – Change order #1 (RFP22112)

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### Background:

The property at 924 5<sup>th</sup> St S., Fargo has been declared a Dangerous Building and the contract for demolition was awarded to Pioneer LLC.

1. The contractor incurred cost to move equipment on and off sight during the demolition process in the amount of \$6,000. This item was listed in the approved proposal under the "Exceptions & Deviations" portion.

**RECOMMENDED MOTION:** Approve the change order #1 in the amount of \$6,000.00

**Change Order Proposal**

Thursday, January 26, 2023

Project: 924 5th St. S. Demolition

**Pioneer LLC proposes the following prices for the aforementioned project.**

Comments: Please see below the alternate for daily mobilization to and from 924 5th St. S. Demolition. The alternate was listed within the additional items portion of the original proposal form, which was presented on 12/5/2022 and was not included in the base bid price.

Proposed Items	Qty	Unit	Unit Price	Extended Price
Daily Mobilization	1	EA	6,000.00	6,000.00
			Subtotal:	6,000.00
			Total:	6,000.00

Sincerely,

*Jamison Gehrig*

Project Manager



18

**MEMORANDUM**

TO: CITY COMMISSION

FROM: SHILOH HANSON, CLERK OF COURT *SAH*

SUBJECT: INDIGENT DEFENSE SERVICE CONTRACT AWARDS TO  
JOE JOHNSON AND STORMY VICKERS

DATE: February 1, 2023

The current contracts for indigent defense services expires on December 31, 2022. The incumbent attorneys Joe Johnson and Stormy Vickers desire to continue their contracts and the Municipal Court recommends the contracts be renewed. There were approximately half the appointments in 2022 than in 2018. It is recommended that compensation remain the same \$61,200 per year for each contract holder due to the decrease in appointments. It is recommended to approve a five-year contract extension with each attorney with a review of compensation after three years. This was approved by the Finance Committee on January 23, 2023.

**Suggested Motion:**

Award indigent defense services contract to the Joe Johnson and Stormy Vickers Law Firms for a five-year contract from January 1, 2023 through December 31, 2028.

**AGREEMENT  
(Indigent Defense)**

**THIS AGREEMENT**, is effective the 1st day of January, 2023, by and between **STORMY VICKERS**, hereinafter referred to as "Counsel" or "Vickers", and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "City".

**WHEREAS**, City is in need of indigent defense services; and,

**WHEREAS**, Counsel has offered and City has agreed to accept such services as provided by Counsel and the parties wish to reduce their agreement to writing.

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto as follows:

1. **LEGAL REPRESENTATION.** Counsel hereby agrees to provide representation to persons charged with misdemeanors under Fargo municipal ordinances and determined to be indigent by the Municipal Court or the Cass County District Court and thus is entitled to such representation at public expense ["Indigent Defendants"] and who are assigned to Counsel. The parties recognize that the City is entering into an agreement similar to this with Joe Johnson, attorney at law. As such, the parties acknowledge and agree that the allocation of Indigent Defendants will be managed as follows:

1.1 The municipal court clerk's office will assign Indigent Defendants to Vickers and Johnson on an alternating week basis so that on a particular week, all Indigent Defendants will be assigned to Vickers and on the following week, all Indigent Defendants will be assigned to Johnson.

1.2 This method will not provide a perfectly equal division of cases or workload between Joe Johnson and Stormy Vickers, but the rotating week basis will provide a practical and workable method of dividing the indigent defense workload on a relatively equal basis.

1.3 Counsel agrees to communicate with, and coordinate with, any other lawyers providing indigent defense services to provide coverage in the event of sudden brief illness, vacations and the like. Counsel will also communicate with the Municipal Court regarding any adjustments or temporary scheduling changes.

2. **TERM.** The term of this agreement shall be for five years, commencing on January 1, 2023, and continuing through December 31, 2027.

3. **SCOPE OF SERVICES.** The legal representation to be provided to indigents by Counsel shall be as follows:

- a. Representation in trial court (Fargo Municipal Court).
- b. Representation in Cass County District Court on transfer cases.
- c. Representation in appeals from Fargo Municipal Court to Cass County District Court in accordance with statute.
- d. Representation in appeals to the North Dakota Supreme Court and North Dakota Court of Appeals.
- e. Re-trials following appeal or orders for new trial.

4. **DESCRIPTION OF SERVICES.** Legal representation to be provided by Counsel for indigents shall include all normal and customary services which are necessary for adequate defense, including, but not limited to, the following:

- a. Investigation
- b. Trial preparation
- c. Preparation and filing of pre-trial and post-trial motions
- d. Oral argument on motions
- e. Personal legal counseling when necessary and appropriate
- f. Preparation of briefs and other necessary work on appeal to District Court, North Dakota Court of Appeals, or the North Dakota Supreme Court
- g. Necessary re-trials following appeal or orders for new trial
- h. All necessary correspondence
- i. All other legal services which may be necessary and proper to fulfill an attorney's ethical obligations to provide competent representation as required by the North Dakota Rules of Professional Conduct

5. **MISDEMEANOR CASES.** Legal representation to be provided under the terms of this agreement shall be provided for misdemeanors only, and Counsel shall not be required to

provide such services for infractions, non-criminal offenses, or civil or administrative matters. Such cases and services are specifically excluded from this contract.

6. **ADMINISTRATION AND APPOINTMENTS.** This agreement shall be administered by the Clerk of the Fargo Municipal Court and all appointments made hereunder shall be in accordance with standards currently applied by the Fargo Municipal Court for determining eligibility for indigent defense defendant's status. The parties recognize that the City is entering into another agreement for indigent defense with Joe Johnson, attorney at law, and that this contract is intended to provide for Stormy Vickers to handle the indigent defense work for one-half, more or less, of the defense cases stemming from Fargo municipal court. Counsel agrees to notify the Municipal Court should appointments increase to such extent that the city may wish to consider engaging one or more additional indigent defense attorneys.

7. **COMPENSATION.** Compensation is renegotiable after three years. Payment to Counsel for services rendered in accordance with the terms of this agreement shall be as follows:

- a. For all services rendered by Counsel as hereinabove described in paragraphs 3(a), 3(b), 3(c) (trial court representation -- Municipal and District), and 3(e) (re-trials following appeal or orders for new trial), the sum of \$61,200 per year prorated for the 11 months remaining in 2023 which shall be paid in equal monthly installments of \$5100.00.
- b. Monthly payments shall be on or before the 5th day of each month following the month for which services were rendered. For example, payment for services for February 2023 shall be made on or before March 5, 2023. To the extent any amount is due for services provided from the effective date of this agreement to the date of its execution and delivery by the parties, payment shall be made within a reasonable time after such execution and delivery.
- c. For all services rendered by Counsel as hereinabove described in paragraph 3(d) (appeals to the North Dakota Court of Appeals or Supreme Court), the sum of \$85 per hour for time reasonably spent researching and drafting briefs, preparing and conducting oral argument, and traveling to and from the court. Said hourly rate on appeals shall be in addition to the annual contract rate. All billings for appeals to the North Dakota Supreme Court shall be submitted on appropriate vouchers and shall be subject to approval by the Judge of the Municipal Court.
- d. For all out-of-pocket expenses, including filing fees, mileage expenses, subpoena fees, necessary per diem, necessary lodging,

copying costs and phone costs. Counsel shall submit appropriate vouchers for payment of expenses, as well as any requests for extraordinary expenses, which shall be subject to approval by the Judge of Municipal Court.

- e. Payment for all services rendered by Counsel for appeals to the North Dakota Supreme Court or the North Dakota Court of Appeals shall be made after submission of appropriate vouchers on approval of the Judge of the Municipal Court. Payment for all out-of-pocket expenses shall be made after submission of appropriate vouchers upon approval of the Judge of the Municipal Court.

8. **REPORTS.** Counsel shall maintain records for cases and services provided to clients.

9. **CONTACT WITH DEFENDANTS.** Counsel shall contact assigned defendants who are in custody within forty-eight (48) hours of the appointment or within the next working day, if the appointment is made on a Friday, a weekend or holiday. For defendants who are not in custody, counsel shall maintain regular office hours Monday through Friday including telephone answering service and return any phone messages left by defendants within 24 hours, or within the next working day, if the message is left on a Friday, a weekend or holiday. Counsel shall interview the defendant within five working days of being appointed as counsel.

10. **ATTENDANCE AT COURT.** Counsel or an approved associate attorney shall be available to attend the usual and customary schedule of Municipal Court sessions in order to avoid unwarranted rescheduling of court cases. Counsel shall, when possible, notify the court in advance of any known periods of unavailability (i.e., vacations, seminars, etc.) in order to avoid scheduling conflicts.

11. **INDEPENDENT CONTRACTORS.** The parties hereto understand and agree that Counsel is an independent contractor and shall not be deemed to be an employee of the City of Fargo for any purpose.

12. **HOLD HARMLESS AND INDEMNIFICATION.** The City shall not be responsible or liable for any claims resulting from actions of Counsel pursuant to this agreement and Counsel hereby agree to indemnify and hold the City harmless from any and all claims, demands, causes of action, or expenses, including attorney's fees, which are incurred by the City as a result of claims asserted as a result of actions or services rendered by Counsel.

13. **MALPRACTICE INSURANCE.** Counsel shall carry malpractice insurance at his own expense during the term of this agreement and any extension thereof. Insurance to be provided shall be in the minimum amount of \$100,000 per claim/\$500,000 aggregate for each calendar year. Counsel shall yearly provide proof of such insurance to the Clerk of Municipal Court. This requirement shall apply to any attorney associated and delegated a portion of the indigent defense duties by Counsel.

14. **TERMINATION.** Either party shall have the right to terminate this contract at will upon thirty (30) days' written notice to the other, without cause. Upon expiration or termination of this agreement for any reason, Counsel shall be responsible for completing any case which is pending or awaiting trial and Counsel shall be entitled to just and equitable compensation (determined at the rate of this contract) for such work.

15. **CONFLICTS OF INTEREST.** If at any time after an appointment has been made, Counsel discovers a conflict of interest pursuant to the North Dakota Code of Professional Responsibility, Counsel will notify the Court of the conflict and the Court will re-assign the particular indigent defendant to another attorney under contract with the City for representation of Indigent Defendants. In the event said other attorney under contract with the City also has a conflict of interest, then, Counsel will be responsible for engaging either associate attorney(s), approved in advance by the Municipal Judge, to handle such case or another attorney outside Counsel's law firm, approved in advance by the Municipal Judge, to handle such case. If the Judge agrees that there is a conflict of interest, the Judge shall revoke the appointment and appoint other counsel and provide compensation therefore beyond the terms of this agreement. In the event any of the above attorneys, including Counsel, are required by the Rules of Professional Conduct to withdraw or are relieved by a court having competent jurisdiction over the case due to threats, complaints or other circumstances which prevent either Counsel or such other attorney or attorneys, from representing the indigent defendant, Counsel shall promptly notify the Municipal Court and arrange for other counsel to be appointed. If the Judge agrees that such withdrawal or other release from representation is necessary or appropriate, the Judge shall revoke the appointment and appoint other counsel and provide compensation therefore beyond the terms of this agreement.

16. **CONTINUING LEGAL EDUCATION.** Counsel and associated counsel shall acquire three (3) hours of continuing legal education in the field of criminal law during each calendar year of the contract. Certification shall be made to the Municipal Court of such attendance.

17. ASSIGNMENT. This agreement shall not be assigned to any other person or firm.

18. MODIFICATION AND CONSTRUCTION. This agreement may not be modified except by written agreement, signed by all of the parties hereto and shall be construed under the laws of the State of North Dakota.

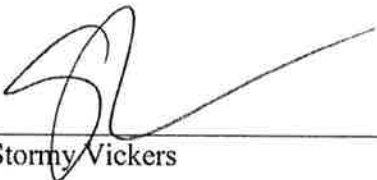
Dated the day and year first above written.

CITY OF FARGO, NORTH DAKOTA  
a municipal corporation

\_\_\_\_\_  
Timothy Mahoney, Mayor

ATTEST

\_\_\_\_\_  
Steven Sprague, City Auditor

  
\_\_\_\_\_  
Stormy Vickers

**AGREEMENT  
(Indigent Defense)**

**THIS AGREEMENT**, is effective the 1st day of January, 2023, by and between **JOE JOHNSON**, hereinafter referred to as "Counsel" or "Johnson", and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "City".

**WHEREAS**, City is in need of indigent defense services; and,

**WHEREAS**, Counsel has offered and City has agreed to accept such services as provided by Counsel and the parties wish to reduce their agreement to writing.

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto as follows:

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- c. Preparation and filing of pre-trial and post-trial motions
- d. Oral argument on motions
- e. Personal legal counseling when necessary and appropriate
- f. Preparation of briefs and other necessary work on appeal to District Court, North Dakota Court of Appeals, or the North Dakota Supreme Court
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8. **REPORTS.** Counsel shall maintain records for cases and services provided to clients.

9. **CONTACT WITH DEFENDANTS.** Counsel shall contact assigned defendants who are in custody within forty-eight (48) hours of the appointment or within the next working day, if the appointment is made on a Friday, a weekend or holiday. For defendants who are not in custody, counsel shall maintain regular office hours Monday through Friday including telephone answering service and return any phone messages left by defendants within 24 hours, or within the next working day, if the message is left on a Friday, a weekend or holiday. Counsel shall interview the defendant within five working days of being appointed as counsel.

10. **ATTENDANCE AT COURT.** Counsel or an approved associate attorney shall be available to attend the usual and customary schedule of Municipal Court sessions in order to avoid unwarranted rescheduling of court cases. Counsel shall, when possible, notify the court in advance of any known periods of unavailability (i.e., vacations, seminars, etc.) in order to avoid scheduling conflicts.

11. **INDEPENDENT CONTRACTORS.** The parties hereto understand and agree that Counsel is an independent contractor and shall not be deemed to be an employee of the City of Fargo for any purpose.

12. **HOLD HARMLESS AND INDEMNIFICATION.** The City shall not be responsible or liable for any claims resulting from actions of Counsel pursuant to this agreement and Counsel hereby agree to indemnify and hold the City harmless from any and all claims, demands, causes of action, or expenses, including attorney's fees, which are incurred by the City as a result of claims asserted as a result of actions or services rendered by Counsel.

13. **MALPRACTICE INSURANCE.** Counsel shall carry malpractice insurance at his own expense during the term of this agreement and any extension thereof. Insurance to be provided shall be in the minimum amount of \$100,000 per claim/\$500,000 aggregate for each calendar year. Counsel shall yearly provide proof of such insurance to the Clerk of Municipal Court. This requirement shall apply to any attorney associated and delegated a portion of the indigent defense duties by Counsel.

14. **TERMINATION.** Either party shall have the right to terminate this contract at will upon thirty (30) days' written notice to the other, without cause. Upon expiration or termination of this agreement for any reason, Counsel shall be responsible for completing any case which is pending or awaiting trial and Counsel shall be entitled to just and equitable compensation (determined at the rate of this contract) for such work.

15. **CONFLICTS OF INTEREST.** If at any time after an appointment has been made, Counsel discovers a conflict of interest pursuant to the North Dakota Code of Professional Responsibility, Counsel will notify the Court of the conflict and the Court will re-assign the particular indigent defendant to another attorney under contract with the City for representation of Indigent Defendants. In the event said other attorney under contract with the City also has a conflict of interest, then, Counsel will be responsible for engaging either associate attorney(s), approved in advance by the Municipal Judge, to handle such case or another attorney outside Counsel's law firm, approved in advance by the Municipal Judge, to handle such case. If the Judge agrees that there is a conflict of interest, the Judge shall revoke the appointment and appoint other counsel and provide compensation therefore beyond the terms of this agreement. In the event any of the above attorneys, including Counsel, are required by the Rules of Professional Conduct to withdraw or are relieved by a court having competent jurisdiction over the case due to threats, complaints or other circumstances which prevent either Counsel or such other attorney or attorneys, from representing the indigent defendant, Counsel shall promptly notify the Municipal Court and arrange for other counsel to be appointed. If the Judge agrees that such withdrawal or other release from representation is necessary or appropriate, the Judge shall revoke the appointment and appoint other counsel and provide compensation therefore beyond the terms of this agreement.

16. **CONTINUING LEGAL EDUCATION.** Counsel and associated counsel shall acquire three (3) hours of continuing legal education in the field of criminal law during each calendar year of the contract. Certification shall be made to the Municipal Court of such attendance.

18. MODIFICATION AND CONSTRUCTION. This agreement may not be modified except by written agreement, signed by all of the parties hereto and shall be construed under the laws of the State of North Dakota.


Dated the day and year first above written.

CITY OF FARGO, NORTH DAKOTA  
a municipal corporation

\_\_\_\_\_  
Timothy Mahoney, Mayor

ATTEST

\_\_\_\_\_  
Steven Sprague, City Auditor

  
\_\_\_\_\_  
Joe Johnson

19

TO: Board of City Commissioners

FROM: Nicole Crutchfield, Planning Director

RE: United Way and FM Area Foundation Subrecipient Agreement *NU*

DATE: February 1, 2023

In April 2022 the City Commission approved American Relief Plan allocations of \$250,000 each to Fargo Moorhead Area Foundation and to United Way of Cass-Clay. These funds were originally coordinated in 2021 for the two organizations to implement nonprofit regranteeing and workforce development programs as a response to pandemic recovery.

The funds were previously budgeted and allocated. The accounts and budget for these items are assigned to account 255-8540-409.38-45. The federal grant number is CDFA #21.027. Today, based on coordination with the Finance Department and the agencies, the funding distribution details have been further coordinated and are represented in the attached subrecipient agreements. Authorization for the Mayor to execute the subrecipient agreements is requested at this time.

Recommendation: Authorize the execution of the Subrecipient Agreements for FM Area Foundation and United Way, committing \$250,000 for each organization to implement regranteeing and workforce development programs.



**Subrecipient Agreement**  
**Between the City of Fargo and United Way of Cass Clay**

THIS AGREEMENT is entered into this 2nd day of February, 2023, (the "Commencement Date") by and between the City of Fargo (the "City"), a North Dakota municipal corporation, and United Way of Cass Clay, a non-profit organization (the "Subrecipient").

WHEREAS, the City is willing to make available up to **\$250,000** from the revenue loss eligible use category under the federal American Rescue Plan funding CDFA #21.027;

WHEREAS, the City wishes to engage the Subrecipient to support populations specifically affected by the COVID-19 Pandemic;

NOW, THEREFORE, for and in consideration of the monies to be received, covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **I. SCOPE OF SERVICES**

---

### **A. Program Delivery and Scope of Work**

As a condition of receiving this sub-award, the Subrecipient will administer funds to support non-government organizations who provided support, programming and relief to citizens and community services who were affected as a result of COVID-19 pandemic. Specifically, to position under and unemployed workers on a path to long-term family-sustaining employment and career success.

#### **1. Levels of Accomplishment – Goals & Performance Measures**

Populations and programs providing support per the review and allocation of funds as designated by United Way of Cass Clay.

#### **2. Performance Monitoring**

The City will monitor the performance of the Subrecipient against the requirements of this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period after notification by the City, suspension or termination procedures will be initiated. If at any time the actual performance outcomes vary greatly from the goals, an amendment to either the goals or funding amount may be performed.

#### **3. Scope of Work**

The subrecipient will prepare a report of findings upon acquisition. The report should report out entities and number of recipients assisted in addition to provide narrative to any secondary developments or impacts.

## **II. PAYMENT**

---

### **A. General Payment Terms**

**1. Maximum Amount**

The total amount to be paid by the City under this Agreement shall not exceed \$250,000.

**2. Requests for Payment**

The Subrecipient will submit to the City requests for payments of activities under this Agreement and consistent with the approved budget. Upon receipt of settlement agreements and invoices the City will process payments.

**3. Payment**

The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. The Subrecipient must submit an invoice to the City of Fargo for reimbursement of expenses within 90 days of expense. The City reserves the right to liquidate funds available under this agreement for costs incurred by the City on behalf of the Subrecipient. The City agrees to notify Subrecipient of liquidated funds used under this agreement for costs incurred by the City within 30 days.

### **B. Duplication of Benefits**

In consideration of Subrecipient's funds from the City, the Subrecipient hereby assigns to the City all of its future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency or the Small Business Administration or other program to the extent of proceeds paid to Subrecipient under this Agreement and that are determined in the sole discretion of the City to be a duplication of benefits ("DOB"). This shall be defined as financial assistance, available to the Subrecipient, which can be used to pay for the costs described under Section I. Budget & Use of Funds for the scope of work described in this agreement that are to be paid for by this grant.

Upon receiving any proceeds from other relief programs or loan programs for this scope of work, that were not already described in the grant application, Subrecipient agrees to immediately notify the City. If some or all of the proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the City forthwith.



### **III. GENERAL CONDITIONS**

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#### **A. Indemnification & Hold Harmless**

The Subrecipient agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting solely from the negligent acts or omissions of the Subrecipient, or the Subrecipient's contractors, successors, or assigns in connection with the work on the property, and the Subrecipient will, at the Subrecipient's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This Agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof. This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Subrecipient's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City.

#### **B. Insurance & Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Subrecipient shall include the City as an additional insured on any insurance policy issued to comply with the requirements of this provision.

#### **C. Conflict of Interest**

The Subrecipient agrees to the following:

- The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts.
- No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract if a conflict of interest, real or apparent, would be involved.
- No covered persons who exercise or have exercised any functions or responsibilities with respect to City-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the City-assisted activity, or with respect to the proceeds from the City-assisted activity, either for themselves or those with whom they have business or immediate

family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City, the Subrecipient, or any designated public agency.

## **IV. ADMINISTRATIVE REQUIREMENTS**

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### **A. Final Report**

The Subrecipient shall submit a final report within one year and/or no later than December 31, 2025, of administration of funds, to include data of number of individuals served.

### **B. Procurement/Purchasing Requirements**

The City of Fargo’s source of funds is from the federal allocation of Coronavirus State and Local Fiscal Recovery Funds (SLFRF). These funds are reported to US Treasury as Revenue Loss and Replacement Funds. Monitoring and Reporting Guidance is referenced as the Uniform Guidance, 2 C.F.R. Part 200, and apply to SLFRF awards other than such provisions as Treasury may determine are inapplicable to the award and subject to such exceptions as may be otherwise provided. The 2022 Compliance Supplement also provided that the requirements of 2 C.F.R. Part 200 are applicable unless stated otherwise. As such, recipients are required to follow Subparts A, B, C, and F of the Uniform Guidance for expenses categorized under Expenditure Category 6 “Revenue Replacement.” However, given the purpose and very broad scope of eligible uses of the revenue replacement funds, only a subset of the requirements in Subparts D and E of the Uniform Guidance apply to recipients’ use of such funds. The applicable requirements are listed below. In general, these requirements provide that recipients should not deviate from their established practices and policies regarding the incurrence of costs, and that they should expend and account for the funds in accordance with laws and procedures for expending and accounting for the recipient’s own funds. 6 Recipients’ use of revenue replacement funds remains subject to the other applicable requirements of the SLFRF program, including among other things the deadlines for obligations and expenditures and the application of federal antidiscrimination requirements.

Uniform Guidance Subpart D and E Requirements Applicable to Revenue Loss Funds Used for the Provision of Government Services

#### **Subpart D Post Federal Award Requirements**

- 200.300 Statutory and national policy requirements.
- 200.302 Financial management.
- 200.303 Internal controls.
- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- Record Retention and Access (2 C.F.R. 200.334 – 200.338)
- Remedies for Noncompliance (2 C.F.R. 200.339 – 200.343)

#### **Subpart E – Cost Principles**

- 200.400(a) - (c), and (e) Policy guide.
- 200.403(a), (c), (d), (g), and (h) Factors affecting allowability of costs.
- 200.404(e) Reasonable costs.

The listing and reference above is not conclusive; the subrecipient is expected to reference the US Treasury's Uniform Guidance for the above for further reference and resource information.

## V. ENTIRE AGREEMENT

The provisions as set forth in items I-V, and all attachments of this agreement constitute the entire agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

### Subrecipient

SIGNED THE 2nd DAY OF February,  
2023.

United Way of Cass Clay

By: 

Karla Isley  
President/ CEO

Federal ID # 41-0810008

DUNS # 164195935

### City of Fargo

SIGNED THE \_\_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_\_\_.

**CITY OF FARGO**, a North Dakota  
municipal corporation

By: \_\_\_\_\_  
Timothy J. Mahoney, M.D.  
Its: Mayor

ATTEST:

\_\_\_\_\_

**Subrecipient Agreement  
Between the City of Fargo and FM Area Foundation**

THIS AGREEMENT is entered into this 31st day of January, 2023, (the "Commencement Date") by and between the City of Fargo (the "City"), a North Dakota municipal corporation, and the Cass Clay Community Land Trust, a North Dakota non-profit organization (the "Subrecipient").

WHEREAS, the City is willing to make available up to **\$250,000** from the revenue loss eligible use category under the federal American Rescue Plan funding CDFA #21.027;

WHEREAS, the City wishes to engage the Subrecipient to support populations specifically affected by the COVID-19 Pandemic;

NOW, THEREFORE, for and in consideration of the monies to be received, covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **I. SCOPE OF SERVICES**

---

### **A. Program Delivery and Scope of Work**

As a condition of receiving this sub-award, the Subrecipient will administer funds support non-government organizations who provided support, programming and relief to citizens and community services who were affected as a result of COVID-19 pandemic.

#### **1. Levels of Accomplishment – Goals & Performance Measures**

Populations and programs providing support per the review and allocation of funds as designated by FM Area Foundation and their formal grant review committee and formal evaluation process.

#### **2. Performance Monitoring**

The City will monitor the performance of the Subrecipient against the requirements of this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period after notification by the City, suspension or termination procedures will be initiated. If at any time the actual performance outcomes vary greatly from the goals, an amendment to either the goals or funding amount may be performed.

#### **3. Scope of Work**

The subrecipient will prepare a report of findings upon acquisition. The report should report out entities and number of recipients assisted in addition to provide narrative to any secondary developments or impacts.

## **II. PAYMENT**

---

### **A. General Payment Terms**

**1. Maximum Amount**

The total amount to be paid by the City under this Agreement shall not exceed \$250,000.

**2. Requests for Payment**

The Subrecipient will submit to the City requests for payments of activities under this Agreement and consistent with the approved budget. Upon receipt of settlement agreements and invoices the City will process payments.

**3. Payment**

The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. The Subrecipient must submit an invoice to the City of Fargo for reimbursement of expenses within 90 days of expense. The City reserves the right to liquidate funds available under this agreement for costs incurred by the City on behalf of the Subrecipient.

### **B. Duplication of Benefits**

In consideration of Subrecipient's funds from the City, the Subrecipient hereby assigns to the City all of its future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency or the Small Business Administration or other program to the extent of proceeds paid to Subrecipient under this Agreement and that are determined in the sole discretion of the City to be a duplication of benefits ("DOB"). This shall be defined as financial assistance, available to the Subrecipient, which can be used to pay for the costs described under Section I. Budget & Use of Funds for the scope of work described in this agreement that are to be paid for by this grant.

Upon receiving any proceeds from other relief programs or loan programs for this scope of work, that were not already described in the grant application, Subrecipient agrees to immediately notify the City. If some or all of the proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the City forthwith.

### **III. GENERAL CONDITIONS**

---

#### **A. Indemnification & Hold Harmless**

The Subrecipient agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting solely from the negligent acts or omissions of the Subrecipient, or the Subrecipient's contractors, successors, or assigns in connection with the work on the property, and the Subrecipient will, at the Subrecipient's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This Agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof. This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Subrecipient's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City.

#### **B. Insurance & Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Subrecipient shall include the City as an additional insured on any insurance policy issued to comply with the requirements of this provision.

#### **C. Conflict of Interest**

The Subrecipient agrees to the following:

- The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts.
- No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract if a conflict of interest, real or apparent, would be involved.
- No covered persons who exercise or have exercised any functions or responsibilities with respect to City-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the City-assisted activity, or with respect to the proceeds from the City-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an

employee, agent, consultant, officer or elected or appointed official of the City, the Subrecipient, or any designated public agency.

#### **IV. ADMINISTRATIVE REQUIREMENTS**

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##### **A. Final Report**

The Subrecipient shall submit a final report within one year of administration of funds, to include the improvements and activities on individual properties. If dollars are expended over multiple years a final report will be submitted by end of year 2024 on the full disbursed amount.

##### **B. Procurement/Purchasing Requirements**

The City of Fargo's source of funds is from the federal allocation of Coronavirus State and Local Fiscal Recovery Funds (SLFRF). These funds are reported to US Treasury as Revenue Loss and Replacement Funds. Monitoring and Reporting Guidance is referenced as the Uniform Guidance, 2 C.F.R. Part 200, and apply to SLFRF awards other than such provisions as Treasury may determine are inapplicable to the award and subject to such exceptions as may be otherwise provided. The 2022 Compliance Supplement also provided that the requirements of 2 C.F.R. Part 200 are applicable unless stated otherwise. As such, recipients are required to follow Subparts A, B, C, and F of the Uniform Guidance for expenses categorized under Expenditure Category 6 "Revenue Replacement." However, given the purpose and very broad scope of eligible uses of the revenue replacement funds, only a subset of the requirements in Subparts D and E of the Uniform Guidance apply to recipients' use of such funds. The applicable requirements are listed below. In general, these requirements provide that recipients should not deviate from their established practices and policies regarding the incurrence of costs, and that they should expend and account for the funds in accordance with laws and procedures for expending and accounting for the recipient's own funds. 6 Recipients' use of revenue replacement funds remains subject to the other applicable requirements of the SLFRF program, including among other things the deadlines for obligations and expenditures and the application of federal antidiscrimination requirements.

Uniform Guidance Subpart D and E Requirements Applicable to Revenue Loss Funds Used for the Provision of Government Services

###### **Subpart D Post Federal Award Requirements**

- 200.300 Statutory and national policy requirements.
- 200.302 Financial management.
- 200.303 Internal controls.
- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- Record Retention and Access (2 C.F.R. 200.334 – 200.338)
- Remedies for Noncompliance (2 C.F.R. 200.339 – 200.343)

###### **Subpart E – Cost Principles**

- 200.400(a) - (c), and (e) Policy guide.

- 200.403(a), (c), (d), (g), and (h) Factors affecting allowability of costs.
- 200.404(e) Reasonable costs.

The listing and reference above is not conclusive; the subrecipient is expected to reference the US Treasury's Uniform Guidance for the above for further reference and resource information.

## V. ENTIRE AGREEMENT

The provisions as set forth in items I-V, and all attachments of this agreement constitute the entire agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

### Subrecipient

SIGNED THE 31 DAY OF January, 2023

Fargo Moorhead Area Foundation, a  
North Dakota non-profit corporation

By: [Signature]  
Eric Wilkie  
Its: Executive Director/CEO

Federal ID # 45-6010377

### City of Fargo

SIGNED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

CITY OF FARGO, a North Dakota  
municipal corporation

By: \_\_\_\_\_  
Timothy J. Mahoney, M.D.  
Its: Mayor

ATTEST:

\_\_\_\_\_




MEMORANDUM

20

**TO: CITY COMMISSION**

**DATE: FEBRUARY 6, 2023**

**FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR** 

**RE: CONTRACT AMENDMENT - ADDITIONAL SCOPE FOR DOWNTOWN INFOCUS WITH INTERFACE STUDIO, INC (SSP22027)**

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In 2016, Interface Studio was hired to facilitate a comprehensive planning process for downtown which was adopted in 2018. After five years, the City hired Interface Studio in February 2022 to assess operational process, data and confirm goals and targeted engagement, pandemic impact and Downtown Community Partnership alignment with the Downtown InFocus.

After a year in review, additional scope has been identified to further prioritize and to identify a finer detail of implementation steps. On January 30<sup>th</sup>, the Finance Committee approved this request.

Recommendation

Approve the scope extension agreement with Interface Studio for professional consulting services for the Downtown Focus Refresh.

INTERFACE STUDIO LLC

340 N. 12<sup>th</sup> Street, #419, Philadelphia, PA 19107

## AGREEMENT FOR PROFESSIONAL DESIGN SERVICES

This AGREEMENT entered into as of the 1<sup>st</sup> day of February 2023, between

Interface Studio LLC (a Pennsylvania limited liability company)  
340 N. 12<sup>th</sup> Street, #419  
Philadelphia, Pa 19107

and City of Fargo Planning Department  
225 N. 4<sup>th</sup> Street,  
Fargo ND 58102

for Downtown InFocus Update Additional Services

This letter serves as an agreement between the client and Interface Studio to provide additional agreed upon services in support of the Downtown Plan update (Downtown InFocus). The proposed additional services and estimated fee are attached.

Interface Studio shall submit monthly invoices for the previous month's work. The monthly invoices shall be based on the amount of hours performed on the job by Interface Studio and their subconsultants.

This Agreement may be terminated immediately by either party upon breach by the other party of a material provision of this Agreement which breach remains uncured for more than ten days following receipt of notice thereof from the non-breaching party; or, for a breach which cannot be cured within ten days, for an additional period, reasonable in length, to allow the breaching party to effect a cure, provided that said party diligently pursues such cure, but in no event more than 30 days following receipt of initial notice from the non-breaching party.

Client and Interface Studio agree that other than the re-work obligation stated above, Interface Studio's total liability to client for any claims, losses, expenses or damages whatsoever, arising out of or in any way related to the Scope of Services performed by Interface Studio under this agreement from any cause or causes, is limited to direct damages to the extent caused by Interface Studio's negligent performance of such work or Interface Studio's willful misconduct in an amount not to exceed one hundred percent (100%) of the fees paid to Interface Studio for such Scope of Services (excluding fees attributable to third-party goods or services), and shall not include liability for any (i) special, indirect, incidental or consequential damages, (ii) damages arising out of loss of data, loss of use or loss of profits or (iii) costs associated with the correction of any construction of the Project.

This Agreement entered into as of the day and year first written above.

INTERFACE STUDIO LLC

CLIENT

By:



By:

Title: Principal

Title: \_\_\_\_\_

## DOWNTOWN INFOCUS UPDATE


ADDITIONAL SERVICES TASK ITEM		TASK DETAILS		COSTS: Interface				COSTS: Ninigret	TIMEFRAME
ADDITIONAL TASK 1: DETAILED IMPLEMENTATION PLAN		The team will develop a series of Action Cards to identify step-by-step the process for implementing each Action of the Downtown InFocus Update. These will be formatted for use internally to guide City staff activities		40	40	40	\$ 15,000	\$ 5,000	FEBRUARY-APRIL 2023
ADDITIONAL TASK 2: ADDITIONAL MEETINGS		To create and refine the Action Cards, we anticipate additional meetings with City departments and leadership. This also includes meetings with DCP and key partners. We are assuming 10 additional meetings		20	40		\$ 8,200	\$ 5,000	FEBRUARY-APRIL 2023
ADDITIONAL TASK 3: PROJECT MANAGEMENT & COORDINATION		We expect 7 calls with City staff over the course of the work. Our expectation is that the work will occur over 3 months mostly to allow time to schedule meetings with key stakeholders.		14	14		\$ 3,920	\$ 500	FEBRUARY-APRIL 2023
TRAVEL / DIRECT EXPENSES		2 trips are expected. One at the outset and another during the process. Meetings that are not able to be scheduled during these trips will happen via video chat or telephone.					\$ 7,000		
				SUBTOTALS: \$ 34,120				\$ 10,500	
				TOTAL: \$				44,620	



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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR** 

**DATE: FEBRUARY 1, 2023**

**SUBJECT: IN-KIND COMMITMENT FOR THE J-STREET PROJECT**

J-Street Properties, LLC is developing an apartment project in Fargo. The City of Fargo has already approved a tax increment financing note for the project.

J-Street Properties is applying for a buy down of their interest rate from the Bank of North Dakota. This requires community match, which can be an in-kind contribution of the tax increment financing assistance.

Attached are the agreements that the City of Fargo needs to approve and sign for the in-kind contribution of the already approved tax increment financing incentives. Fargo is not providing any cash or loan guarantees. The Bank of ND will provide a much lower interest rate if this interest buy down is approved.

**RECOMMENDED MOTION:**

Approve agreements to provide in-kind contributions to J-Street Properties for the J-Street apartment project.

Attachments

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	J-STREET PROPERTIES LLC
Program Option:	Flex PACE

### INTEREST BUYDOWN AGREEMENT PACE PROGRAM

This Interest Buydown Agreement is made between **CITY OF FARGO** (the "Community"), and the **Bank of North Dakota** ("BND") acting on behalf of the PACE Program ("PACE") for the purpose of a buydown on the interest for the loan (the "Loan") received by **J-STREET PROPERTIES LLC** (the "Borrower") from BANK FORWARD (the "Originating Lender") pursuant to a promissory note dated 12/1/2021. The attached payment schedule labeled Exhibit A details the Loan amount and terms and may be modified from time to time. The Borrower, Community, and BND agree as follows:

#### ARTICLE I

#### DEFINITIONS

Section 1.01. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Addendum to the Promissory Note – means the Addendum to the Promissory Note entered into by the Borrower and Originating Lender. The addendum to the Promissory Note addresses specific terms and conditions with respect to the Borrower's participation of their Loan in PACE Program offered by BND.

Agreement - means this Interest Buydown Agreement, as amended, supplemented, or modified from time to time.

Affiliate - means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Originating Lender or Borrower; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Originating Lender or Borrower; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Originating Lender or Borrower. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Borrowing Rate - means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

Business Day - means any day other than a Saturday, Sunday, or other day on which commercial banks in North Dakota are authorized or required to close under the laws of the State of North Dakota, unless otherwise provided for in the Note.

Buydown Documents means this Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community commitment amount, if any.

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	J-STREET PROPERTIES LLC
Program Option:	Flex PACE

Escrow Agent – means Bank of North Dakota acting through its Trust Department.

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of new affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Investment – Total costs of equipment, real estate and/or improvements to real property associated with the PACE loan request.

Note - may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Participation Agreement – means the agreement between the Originating Lender and BND in connection with the Loan.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Person - means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	J-STREET PROPERTIES LLC
Program Option:	Flex PACE

## ARTICLE II

TERMS OF THE INTEREST RATE BUYDOWN

SECTION 2.01. Interest Buydown Amount. BND and the Community agree on the terms and conditions set forth in this Agreement to buy down the interest from the Yield Rate to the Borrowing Rate for the Loan.

1. Interest Payments. BND and the Community shall make Interest Buydown Amount payments to the Escrow Agent as provided for in the attached payment schedule labeled Exhibit A.
2. Method of Payment. BND and the Community shall make each payment to the Escrow Agent as provided by the Buydown Documents no later than the date when due as defined by the Note in lawful money of the United States in immediately available funds unless otherwise expressly provided for. Whenever any payment to be made under the Buydown Documents shall be stated to be due on a Saturday, Sunday, or a public holiday, or the equivalent for banks generally under the laws of the State of North Dakota, the payment shall be made on the next succeeding Business Day.
3. Disbursement of the Interest Buydown Amount. The Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out and described in the payment schedule labeled Exhibit A subject to the Note.
4. Default by the Borrower. In the event of a default by the Borrower, as defined in the Note, or a Default as defined in the Addendum to Promissory Note Pace Program given for the Note, the Escrow Agent shall discontinue any payments required under the Buydown Documents until such time as the Default is cured.
5. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the payment date of the payment until the payment is received will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Buydown Amount on the next scheduled payment date, unless otherwise agreed to by BND.
6. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by the Originating Lender fifteen (15) days prior to the next payment due date under Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
7. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then the Borrower shall remit the difference to Originating Lender.
- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this

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Borrower:	J-STREET PROPERTIES LLC	
Program Option:	Flex PACE	

Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.

8. Termination of PACE Program. In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

SECTION 3.01. The Community represents and warrants to the Borrower and BND that:

1. Good Standing, and Due Qualification. The Community is in good standing under the laws of the State of North Dakota. The execution, delivery, and performance of this Agreement by the Community has been duly authorized by all necessary Persons.
2. Other Agreements. The Community is not a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, Originating Lender or their Affiliates, or the ability of the Borrower, Originating Lender or their Affiliates to carry out the Borrower's and the Originating Lender's obligations under the Note and Related Documents. The Community and the Community's Affiliates are not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to the performance of the Note and Related Documents.
3. Sufficient Funds. The Community has or will make available sufficient funds to finance the Community Buydown Amount or Community In-kind Commitment Amount. This includes pledging revenue producing mechanisms which the Community is statutorily authorized to pledge or impose. Revenue producing mechanisms include but are not limited to any bond or mill levy or other tax which may be pledged or imposed for the purpose of economic development.
4. Source of Funds. The Community Buydown Amount or Community In-kind Commitment Amount does not nor will it ever be derived directly or indirectly from a loan, grant or gift from the Borrower or the Borrower's Affiliate or a contribution from Originating Lender or Originating Lender's Affiliate which is greater than the Originating Lender or its Affiliate would normally contribute to the Community's economic development efforts. The Community Buydown Amount may be in the form of a loan. Interest may begin to accrue, however, no repayment of principal or interest on the Community loan may commence until the PACE interest buydown amount has been fully expended.
5. Litigation. There is no pending or threatened action or proceeding against or affecting the Community before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.
6. No Defaults on Outstanding Judgments or Orders. The Community has satisfied all judgments, and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation or any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, which materially adversely affects the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.



OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	J-STREET PROPERTIES LLC
Program Option:	Flex PACE

## ARTICLE IV

AFFIRMATIVE COVENANTS

SECTION 4.01. Notice of Adverse Actions. So long as the Loan remains unpaid, all parties to this Agreement shall promptly after the commencement thereof, provide all parties notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the parties which could have a material adverse effect on the Community's ability to perform under the Note and Related Documents.

SECTION 4.02. Obligation to Resolve Disputes. It is the intent of all parties to this Agreement that conflicts or potential conflicts and circumstances or situations which arise which are not considered herein, be resolved at the most informal level possible and to the mutual benefit of each party to the extent possible.

SECTION 4.03. Program Requirements. So long as the Note is participating in the PACE Program:

1. Job Creation: - Job creation is not necessarily a requirement of the Flex PACE or Flex PACE for Affordable Housing Programs, but will be tracked for informational purposes. The Borrower will show evidence of the level of employment created and maintained in North Dakota for the duration of this Agreement. At the request of the BND, the Borrower shall complete a recipient report to verify employment levels, and such other evidence as BND may request from the Borrower.
2. Donations, Gifts or Loans. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence, the Originating Lender's or Community's ability or desire to make available Loan funds under the PACE Program.

## ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.01. Condition Precedent to this Agreement. The obligation of BND under this Agreement is subject to the condition precedent that BND shall have received on or before the day of the Loan each of the following, in form and substance satisfactory to BND and its counsel:

1. Evidence of all Corporate Action by the Community. BND may request certified copies of all corporate action taken by the Community, including resolutions of its Board of Directors, or certified copies of the official minutes of the appropriate governing body, or the equivalent thereof, authorizing the execution, delivery, and performance of the Buydown Documents to which it is a party and each other document to be delivered pursuant to this Agreement.
2. Opinion of Counsel for the Community. A favorable opinion of counsel for the Community in substantially the form of Exhibit B and as to such other matters as BND may reasonably request. Exhibit B shall also certify the names and true signatures of the officers of the Community authorized to sign the Buydown Documents to which it is a party and each other document to be delivered by the Community under this Agreement.
3. Buydown Documents as required by the PACE Program from all parties to this Agreement.

SECTION 5.02. Notification to Originating Lender. Upon satisfaction of the conditions, BND shall notify the Originating Lender in writing that all conditions have been satisfied for the Loan's participation in the PACE Program.

## ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Amendments, Etc. No amendment, modification, termination, or waiver of any provision,

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Borrower:	J-STREET PROPERTIES LLC	
Program Option:	Flex PACE	

nor consent to any departure from this Agreement, shall in any event be effective unless such is in writing and signed by BND and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 6.02. Notices, Etc.** All notices and other communications provided for under this Agreement shall be in writing and shall be effective upon the earlier of (a) when actually delivered, (b) when deposited with a nationally recognized overnight courier or (c) if mailed, when deposited in the United State mail, as first class, certified or registered mail postage prepaid, directed to the applicable party at the address specified below, except that notices to BND pursuant to the provisions of Article II shall not be effective until received by BND.

Community: CITY OF FARGO  
225 4TH ST N  
FARGO ND 58102-4809

BND: BANK OF NORTH DAKOTA  
PO BOX 5509  
BISMARCK, ND 58506-5509  
Attention: Commercial Loan Department

Borrower: J-STREET PROPERTIES LLC  
505 BROADWAY N STE 201  
FARGO ND 58102-4489

Any party may change its address for notices by giving formal written notice to the other parties and specifying that the purpose of the notice is to change the party's address.

**SECTION 6.03. No Waiver, Remedies.** No failure on BND's part to exercise, and no delay in exercising, any right, power, or remedy under any Buydown Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Buydown Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Buydown Documents are cumulative and not exclusive of any remedies provided by law.

**SECTION. 6.04. Successors and Assigns.** This Agreement may not be assigned or transferred by either party without the prior consent of BND.

**SECTION 6.05. Costs, Expenses, and Attorney Fees.** The Community and BND agree to indemnify each other for reasonable fees and out-of-pocket expenses, including attorney fees, in connection with the enforcement of any portion of this Agreement.

**SECTION 6.06. Indemnification for Misrepresentation.** The Community and BND agree to indemnify each other for any and all loss, payment and additional expense resulting from any misrepresentation or breach of warranty made herein, including any expense and legal fees that might be incurred because of any such misrepresentation or breach of warranty.

**SECTION 6.07. Disclosure of Information.** The Community hereby consents to the disclosure of all financial, business, and other information about the Community which BND may possess at any time to other lenders participating in the Loan.

**SECTION 6.08. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

**SECTION 6.09. Severability of Provisions.** Any provision of any Buydown Document which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or lack of authorization without invalidating the remaining provisions of the Buydown Documents or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

**SECTION 6.10. Headings.** Article and Section headings in the Buydown Documents are included for the convenience of reference only and shall not constitute a part of the applicable Buydown Documents for any other purpose.

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Borrower:	J-STREET PROPERTIES LLC	
Program Option:	Flex PACE	

SECTION 6.11. Third Party Beneficiary. The parties acknowledge that the Borrower is an intended third party beneficiary of this agreement and, to the extent that funds are available and no determination has been made by a court of competent jurisdiction that this agreement is unenforceable, is entitled to enforce the agreement as provided by N.D.C.C. § 9-02-04.

SECTION 6.12 Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

CITY OF FARGO

By: \_\_\_\_\_

Its: \_\_\_\_\_

BANK OF NORTH DAKOTA

By: Rodney Heit

Rodney Heit

Its: Business Banker

J-STREET PROPERTIES LLC

By: [Signature]

Title: President

By: [Signature]

Title: Vice President

**ESCROW AGREEMENT  
PACE PROGRAM**

This Escrow Agreement (the "Agreement") is made between the **BANK OF NORTH DAKOTA** acting on behalf of the PACE program ("BND"), **CITY OF FARGO** (the "Community"), and the **BANK OF NORTH DAKOTA** acting through its Trust Department as Escrow Agent (the "Escrow Agent") for the purpose of receiving and disbursing the Interest Buydown Amount in connection with the loan (the "Loan") made to **J-STREET PROPERTIES LLC** (the "Borrower") by **BANK FORWARD** (the "Originating Lender") pursuant to a promissory note dated 12/1/2021 (the "Note").

BND, the Community and the Escrow Agent hereby agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Interest Buydown Agreement. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Agreement - means this Escrow Agreement, as amended, supplemented, or modified from time to time.

Borrowing Rate - means the interest rate to be paid by the Borrower after subtracting the Interest Buydown Amount from the interest expense which will accrue at the initial Yield Rate over the life of the PACE commitment as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note depending upon the periodic adjustment of the rate index over the term of the Loan, but in no event will it be less than the minimum rate set forth in the Note.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the payment schedule labeled Exhibit A.

Buydown Documents - means this Agreement, the Interest Buydown Agreement, Addendum to Promissory Note PACE Program, and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount, and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community Commitment Amount, if any.

Escrow Agent - means Bank of North Dakota acting through its Trust Department.

Escrow Agreement - Agreement by which the payments to retire the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program - means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program - means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of affordable multi-family housing units within the Community.

Interest Buydown Amount - means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as

set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

PACE Program - means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

Section 2. Receipt of Interest Buydown. BND and the Community agree to deliver to the Escrow Agent the amount as set out and described in the payment schedule -labeled Exhibit A in the amounts and on the dates indicated, subject to this Agreement.

Section 3. Disbursement of the Interest Buydown Amount. The Escrow Agent agrees to disburse the Interest Buydown Amount to Originating Lender in the amounts and on the dates as set out and described in the payment schedule labeled Exhibit A, subject to this Agreement.

Section 4. Notice from BND. Upon notice of receipt of Loan payment according to the terms of the Note, notice from BND, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A. If on the date the Loan payment is received by BND, the Escrow Agent has not received all or any part of the Community's share of the Interest Buydown Amount as indicated on the payment schedule labeled Exhibit A, the Escrow Agent shall not disburse either the BND Buydown Amount or and the Community Buydown Amount, to the Originating Lender.

In the event that all parties to this Agreement have consented that the Community will provide a Community In-Kind Commitment Amount in lieu of all or some part of its cash portion of the Interest Buydown Amount, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A.

Section 5. Notice of Suspension of Disbursement of Interest Buydown Amount. Upon notice by BND to the Escrow Agent that payments of the Interest Buydown Amount are to be suspended, the Escrow Agent will not make any further disbursements of the Interest Buydown Amount to the Originating Lender, until the Escrow Agent receives notice from BND, directing the Escrow Agent to resume disbursing the Interest Buydown Amount upon receipt of a notice for payment.

Section 6. Notice of Final Disbursal and Termination. Upon final Interest Rate Reduction disbursement or termination of the Interest Buydown Agreement, the Escrow Agent will disburse any remaining amounts held under this Agreement to the Community and the PACE Fund according to their respective shares of the remaining balance. This Agreement will be considered terminated upon return of funds or final Interest Rate Reduction disbursement and shall have no further duties or obligations to

any party other than, upon request, to provide a final accounting of receipts and disbursements.

Section 7. Duties of Escrow Agent, Reliance on Notices. The Escrow Agent shall not be liable as Escrow Agent except for the performance of such duties as are specifically set out in this Agreement to be performed by the Escrow Agent and the Escrow Agent may conclusively rely, as to the truth of the statements expressed in any notice, in the absence of bad faith on the part of the Escrow Agent, upon notices conforming to the requirements of this Agreement. No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall at all times be protected from liability for any error or judgment made in good faith by a responsible officer or officers unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts and the Escrow Agent shall at all times be protected with respect to any action taken or omitted to be taken by it in good faith and in accordance with the directions contained in a notice received by the Escrow Agent pursuant to this Agreement. The Escrow Agent shall also be protected when acting in good faith and upon advice of its counsel.

Section 8. Fees and Costs. The Escrow Agent shall be entitled to receive fees, in such amounts as it may establish from time to time, and to be reimbursed for its costs, including attorney's fees, for the performance of its duties under this Agreement.

Section 9. Notice. All notices, demands and requests to be given or made under this Agreement, if in writing, shall be properly made if sent by United States mail, postage prepaid, and addressed as follows:

Community:	CITY OF FARGO 225 4TH ST N FARGO ND 58102-4809
BND:	BANK OF NORTH DAKOTA, Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Financial Institutions Market
Escrow Agent:	BANK OF NORTH DAKOTA, Escrow Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Trust Department
Lender:	BANK FORWARD 1202 28TH ST S PO BOX 7070 FARGO ND 58106

Any of the above parties may change the address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to each of the other parties.

Section 10. Amendments. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement shall in any event be effective unless in writing and signed by all parties and then such waiver, consent or amendment shall be effective only in the specific instance and for the specific purpose for which given.

Section 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

Section 12. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable by law shall be deemed severable to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

Section 13. Headings. Article and Section headings in this Agreement are for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 14. No Waiver: Remedies. No failure on the part of the Escrow Agent to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

Section 15. Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

**BANK OF NORTH DAKOTA, BND**



Rodney Heit  
Title: Business Banker

**CITY OF FARGO**

\_\_\_\_\_  
Title: \_\_\_\_\_

**BANK OF NORTH DAKOTA, Escrow Agent**



Title: ESCROW OFFICER

**Please select Community's preferred billing option:**

- ☐ One-Time Payment (PV)
- ☐ Annually
- ☐ Semi-Annually
- ☐ Quarterly
- ☐ Monthly

☒ *Tax Increment Financing*

**COMMUNITY PACE  
INTEREST BUYDOWN AUTHORIZATION**

The **CITY OF FARGO** (the Community) has approved its participation in the PACE Program for a loan to **J-STREET PROPERTIES LLC** (the Borrower) and has made the necessary provisions to match the BND Buydown Amount to be paid by Bank of North Dakota (BND) as required by the program.

The total PACE benefit to the Borrower and the breakdown to the Community and BND are detailed in the payment schedule labeled Exhibit A.

The Borrower's rate will be bought down approximately **2.00** below the Yield Rate as defined in the Escrow Agreement Pace Program at the time of closing of the Loan to the Borrower, unless otherwise agreed to in writing.

The Community Authorized Representative signing this Authorization represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Authorization and that this Authorization is a valid, legal and binding on the Community and enforceable in accordance with its terms of this Authorization.

The Community shall provide an Opinion of Counsel in a form satisfactory to BND verifying the Community has taken appropriate action and has authority for its participation in the PACE Program.

\_\_\_\_\_  
Community Authorized Representative

\_\_\_\_\_  
(Please type or print name above)



(22)



# FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

## CRIMINAL INVESTIGATIONS DIVISION

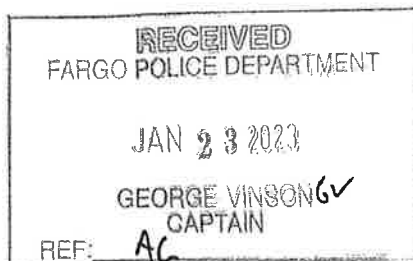
### MEMORANDUM

**To:** Chief David Zibolski

**From:** Lt Jared Crane *MC*

**Date:** 01.20.2023

**RE:** Update on Hate Crime Investigations for the fourth quarter of 2022



The following is a summary of bias and hate crime investigations that have taken place for the fourth quarter of 2022:

During the fourth quarter of 2022, there were five incidents reported in which a bias motivation was initially listed in the case (one in October, two in November, and two in December). None of these cases should have had a bias motivation entered in the initial report. One case in December was a complete mistake and there was no mention in the report of a potential bias factor whatsoever (race, sexual orientation, etc.). The remaining cases for the fourth quarter of 2022 were reviewed and it was determined there was no bias motivation and/or the report charge did not fall under any of the three city ordinances related to a hate crime emphasis. After review, the bias motivation element was removed from all of the cases listed in the fourth quarter of 2022.

Fourth quarter reports which apply to City of Fargo ordinances:

1. **22-83315:** This case was reported on 11/22/22. There are no suspects in this case. The graffiti involved a spray-painted image (stenciled logo in red and blue) located in a walkway under 32 Ave S in the 1700 block. Earlier in 2022, I discussed the *Patriot Front* group with FBI Supervisor Erin Falb. *Patriot Front* is known to the FBI; however, they do not have any solid information or evidence suggesting they are a white supremacist or hate group – although they suspect it. There has not been any violence associated with *Patriot Front* that the FBI is aware of at this time. For these reasons, as with the last incident involving *Patriot Front*, the bias motivation has been removed from this inactive case.

Fourth quarter reports which do not apply to City of Fargo ordinances:

1. **22-71472:** This case was reported on 10/4/22. This incident was a neighbor dispute over street parking. Two neighboring couples were involved in this incident. One couple claims a female neighbor was in their driveway and called her a "racist bitch." The other couple involved stated they had parked their car in the street, and when they exited, the male from the other couple said, "If you park there again I'll blow a hole in your vehicle you fucking

AC STAMP - Backlot  
2nd page

nigger." No impartial witnesses were available to corroborate either story. Initially, the officer who took this report listed two offenses: disorderly conduct and harassment – hate crime. This was a mistake since the elements of harassment under the city ordinance were never met and that offense does not apply to this situation. Currently, the City Attorney's Office is reviewing this case for disorderly conduct. The motivational bias was removed from this case since race was not the motivation. This incident began over a parking disagreement. Although a racial slur was allegedly used, there is no evidence to suggest that race was the motivating factor.

2. **22-81581:** This case was reported on 11/14/22. After a dispute between residents and the apartment manager, [REDACTED] eventually called the property manager and left a scathing voicemail protesting the apartment policies. [REDACTED] also made racist statements to include "I hate white people" and "all white people should die." This concerned the victim for her safety so a call was made to police. Initially this case was sent to the CA Office with 'harassment – hate crime' listed as the offense. The CA Office is going to prosecute this case; however, they have amended the charge to disorderly conduct. Disorderly conduct is not one of the three City of Fargo ordinances with a hate crime attachment. While [REDACTED] clearly shows disdain towards white people, his racist view was not the motivation for the voicemail, but rather he was contesting the apartment management policies. For these reasons, the bias motivation was removed from this case.
3. **22-87700:** This case was reported on 12/11/22. This incident involved a verbal dispute in which two males began arguing. One of the males is a friend of a female resident at the apartment building, while the other male lives in an apartment above the female resident. The word "nigger" was used by one of the males in a somewhat threatening manner. The charge in the report is disorderly conduct; which is not one of the three City of Fargo ordinances which have a hate crime emphasis. Ultimately, this case was not charged out by the City Prosecutor.
4. **22-87900:** This case was reported on 12/12/22. This incident involved an argument between two males who knew each other. The officer who took this report made a mistake with coding and a bias motivation should have not been indicated in any way. Also, the charge in the case is disorderly conduct; which is not one of the three City of Fargo ordinances with a hate crime emphasis. The coding error was removed from this case.

In total for 2022, officers and detectives have investigated thirteen incidents which had a bias motivation indicated in the initial report. Eleven of the cases involved an allegation of disorderly conduct. This charge is not one of the three City of Fargo ordinances which have a hate crime emphasis. Two of the 2022 cases involved the *Patriot Front* group - one was a spray painted stencil under a bridge while the other involved stickers being put on walls at West Acres Mall. The incident with the stickers at the mall was an informational report only with no monetary damage. Regarding the *Patriot Front* group, there is only suspected intel that the group is a white supremacy group according to the FBI, so motivational bias is relatively uncertain based on lack of evidence. For that reason, the motivational bias was removed from the two *Patriot Front* group reports. There was only one case for 2022 in which the motivational bias was left in place. This was another disorderly conduct case involving [REDACTED] while in the Downtown area. This case was charged out by the City Prosecutor as disorderly conduct and did have evidence to suggest there was a racial bias; however, this charge is not one of the three City of Fargo ordinances which has a hate crime emphasis. In summary, the bias motivation was removed from twelve out of the thirteen cases in 2022.

A review is conducted of all cases submitted with a bias designation indicated by the responding officer. For background, the Federal Bureau of Investigation has established guidelines for the collection of hate crime data as part of their Uniform Crime Reporting program. Offenses that are motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity are reported to the FBI if the police investigation reveals objective facts that would lead a "reasonable and prudent person" to conclude that the offender's actions were motivated by bias. FBI guidelines also recommend a secondary review of these cases to ensure that the facts of the case support a hate crime designation. A secondary review is completed as the cases are reported to us.



**PUBLIC WORKS/OPERATIONS**

**Fleet Management, Forestry,  
Streets & Sewers, Watermeters,  
Watermains & Hydrants  
402 23<sup>rd</sup> STREET NORTH  
FARGO, NORTH DAKOTA 58102  
PHONE: (701) 241-1453  
FAX: (701) 241-8100**

January 20, 2023

23

The Honorable Board of City Commissioners  
City of Fargo  
225 Fourth Street N  
Fargo, ND 58102

RE: Fuel Purchase for 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2023 RFV23003

Commissioners:

The Fuel Procurement Committee, comprised of the Finance Director, the Director of Operations and the Fleet Services Manager, monitors the City of Fargo's current and projected fuel use and the fuel market to determine when conditions are favorable to lock in fuel prices for 80% of the city's projected fuel uses.

On Jan 20, 2023, the Fuel Procurement Committee received bids for 270,000 gallons of #2 Diesel and 142,000 Gallons of Unleaded Gasoline. The award was made to Northdale Oil I with a submitted low bid of \$1,230,514.00 without tax. (RFV23003).

Attached for your review is the Bid Tab from Jan 20, 2023 and the Fuel Contract.

RECOMMENDED MOTION: I/we hereby move to authorize and execute the Forward Fuel Contract (RFV23003) for the 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2023.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Allan Erickson".  
Allan Erickson  
Fleet Services Manager

Snow Removal  
Street Maintenance  
Right of Way Maintenance

Sanitary & Storm  
Sewer Maintenance  
Street Name Sign Maintenance

Fleet Management  
Meters Readings,  
Installations & Maintenance

Urban Forestry  
Water Service/Hydrants  
& Watermain Maintenance



**City of Fargo Fuel Bid for 3<sup>rd</sup> and 4<sup>th</sup> Quarter of 2023**  
**Due by 9:00 AM Central Time, Jan 20, 2023**  
**Please list below your prices on a quarterly basis.**

\$ Per Gallon will **INCLUDE**

Any local freight/delivery charges.

The Federal LUST (Leaking Underground Storage Tank) fee. (One tenth of one cent per gallon)

North Dakota State Inspection fee. (One-fortieth of one cent per gallon)

Federal Oil Spill Recovery Fee

<u>3rd Quarter (July 1 – Sep 30)</u>	<u>Gallons</u>	<u>Cost/Gallon</u>
#2 Diesel Fuel	135,000	<u>3,095</u>
No-Lead Ethanol 87 Octane	71,000	<u>3,354</u>
<u>4th Quarter (Oct 1 – Dec 31)</u>		
#2 Diesel Fuel	135,000	<u>3,07</u>
No-Lead Ethanol 87 Octane	71,000	<u>2,255</u>
Total Gallons #2	270,000	<u>\$ 832,275</u>
Total Gallons No-Lead	<u>142,000</u>	<u>\$ 398,239</u>
	412,000	
<b>TOTAL</b>		<u><b>\$1,230,514</b></u>

Demurrage Charge per hour after the first hour

\$60

**Vendor:**

Northdale Oil

**Signature:**

Scott Reed

**Title:**

President

**Date:**

1/20/22

**Time:**

8:30



Bid Received  
Accepted  
1-20-23

See Attached Bid Clarification  
Q3 \$2.354

**Allan Erickson**

---

**From:** Tyler Stockton <tyler@NORTHDALEOIL.COM>  
**Sent:** Friday, January 20, 2023 9:05 AM  
**To:** kcostin@FargoND.gov; Benjamin Dow; Allan Erickson; Jordan Smith  
**Cc:** Scott Reck  
**Subject:** RE: Northdale Q3 and Q4 Bid

Quarter 3 gas should be 2.354 and it would be honored as such.

Tyler Stockton  
Sales  
Northdale Oil Inc.  
203 14<sup>th</sup> Street NE  
East Grand Forks, MN 56721  
Phone: 218.773.4345  
Cell: 701.520.9056  
Fax: 218.793.0106  
[Tyler@northdaleoil.com](mailto:Tyler@northdaleoil.com)



---

**From:** Tyler Stockton  
**Sent:** Friday, January 20, 2023 8:51 AM  
**To:** kcostin@FargoND.gov; Benjamin Dow <bdow@FargoND.gov>; AErickson@FargoND.gov; Jordan Smith <jmsmith@matbus.com>  
**Cc:** Scott Reck <scott@NORTHDALEOIL.COM>  
**Subject:** Northdale Q3 and Q4 Bid

Good morning,

Attached is our bid for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2023.

Thank you!

Tyler Stockton  
Sales  
Northdale Oil Inc.  
203 14<sup>th</sup> Street NE  
East Grand Forks, MN 56721  
Phone: 218.773.4345  
Cell: 701.520.9056  
Fax: 218.793.0106

## FUEL BID TAB

		Northdale		Hartland		Farstad Oil Inc.		Mansfield	
<u>3rd Quarter (July 1 - Sept. 31)</u>									
#2 Diesel Fuel	135,000	\$3.0950		N/B		\$3.2700		\$3.3068	
No-Lead 10% Ethonal 87 Octane	71,000	\$2.3540		N/B		\$2.7300		\$2.7175	
<u>4th Quarter (Oct 1 - Dec 31)</u>									
#2 Diesel Fuel	135,000	\$3.0700		N/B		\$3.2200		\$3.2253	
No-Lead 10% Ethonal 87 Octane	71,000	\$2.2550		N/B		\$2.5500		\$2.4455	
		Avg \$/Gal		Avg \$/Gal		Avg \$/Gal		Avg \$/Gal	
Total Gallons #2	270,000	\$3.0825	\$ 832,275.00	#DIV/0!	#DIV/0!	\$3.2450	\$ 876,150.00	\$3.2661	\$ 881,833.50
Total Gallons No-Lead	142,000	\$2.3045	\$ 327,239.00	#DIV/0!	#DIV/0!	\$2.6400	\$ 374,880.00	\$2.5815	\$ 366,573.00
2022 Q3/Q4 Fuel Bid			\$ 1,159,514.00		#DIV/0!		\$ 1,251,030.00		\$ 1,248,406.50

February 1, 2023

The Honorable Board of City Commissioners  
City of Fargo  
225 North Fourth Street  
Fargo, ND 58102

RE: Mains and Hydrants Purchase of One (1) Enclosed Steam Generator. (RFP23037)

Commissioners:

On January 30, 2023, proposals were received for the purchase of one (1) Enclosed Steam Generator. One proposal was submitted for RFP23037.

One proposal met the specifications:

<u>Vendor</u>	<u>Price</u>
Swanston Equipment Corp.	\$84,200.00

The review committee, consisting of Tom Ganje, Paul Fiechtner and Ben Dow, determined that one proposal was compliant. Swanston Equipment Corp. met all required specifications. Our recommendation is to, purchase based on the proposal from Swanston Equipment Corp. Funding for this project is included in the 2023 Mains and Hydrants Budget. A 2-year lease will be procured for the full cost at the time the Enclosed Steam Generator is received.

SUGGESTED MOTION:

Approve the recommendation to purchase (1) Enclosed Steam Generator from Swanston Equipment for the amount of \$84,200.00.

Respectfully Submitted,



Tom Ganje  
Fleet Purchasing Manager

**Request for Proposals (RFP23037)**  
**(1) Enclosed Steam Generator**

1/30/23

**Mains and Hydrants Department**  
**Proposal Evaluation Summary**

Swanston Equipment	
Manufacture Model	Souix SF20 Steam Flo
Individual Unit \$	\$84,200.00
Total	\$84,200.00
Est. Delivery	April



REPORT OF ACTION**FINANCE COMMITTEE**

Location: Solid Waste Division - Recycling

Type: 2023 Temporary Surcharge Request  
MinnKota Recycling

Date of Hearing: 1/30/23

<u>Routing</u>	<u>Date</u>
City Commission	<u>2/06/23</u>
Project File	<u>                    </u>

25

Scott Olson, Solid Waste Utility Director, with Jen Pickett, Solid Waste Recycling Coordinator, presented the attached email request and market index background information from MinnKota Recycling which explains the need for a \$50.00/ton surcharge on all comingled recyclables collected by the City of Fargo from March 1, 2023-December 31, 2023. Should cardboard market values recover and go above \$95/ton, Minnkota Recycling would not charge the surcharge.

Minnkota Recycling and the City of Fargo entered into their agreement on May 1, 2022, for a term of three years, but the extended decline in recyclable material markets has since caused MinnKota a significant financial loss. The \$50.00 surcharge is intended to offset the loss and will be applied to all municipalities and entities currently utilizing MinnKota's recycling services.

In addition to the request for an agreement amendment, Mr. Olson discussed that funding the additional expenses due to the surcharge cost could be done by reallocating the necessary funds from Solid Waste's Landfill Capital Improvements budget or through additional revenues expected from the Renewable Energy Program.

**MOTION:**

On a motion by Michael Redlinger, seconded by Dave Piepkorn, the Finance Committee voted to authorize Solid Waste staff to work with the City Attorney's Office to amend the 3-year agreement with MinnKota Recycling to include the surcharge on comingled material as described above.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Dr. Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		<u>X</u>
Dave Piepkorn, Commissioner	<u>X</u>	<u>X</u>		
Michael Redlinger, City Administrator	<u>X</u>	<u>X</u>		
Terri Gayhart, Director of Finance	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		

ATTEST:

  
 Tim Mahoney  
 Finance Committee Chairman

C: Commissioner Preston  
 Commissioner Kolpack  
 Commissioner Strand

REPORT OF ACTIONUTILITY COMMITTEE

Location: Solid Waste Division – Landfill

Type: 2023 Temporary Surcharge Request by Minnkota Recycling

Date of Hearing: 2/01/2022

<u>Routing</u>	<u>Date</u>
City Commission	2/06/2023
Project File	

Scott Olson, Solid Waste Utility Director, presented the final balancing change orders for project SW20-01.

Minnkota Recycling and the City of Fargo entered into their agreement on May 1, 2022, for a term of three years, but the extended decline in recyclable material markets has since caused Minnkota a significant financial loss. The \$50.00 surcharge is intended to offset the loss and will be applied to all municipalities and entities currently utilizing Minnkota's recycling services.

In addition to the request for an agreement amendment, Mr. Olson discussed that funding the additional expenses due to the surcharge cost could be done by reallocating the necessary funds from Solid Waste's Landfill Capital Improvements budget or through additional revenues expected from the Renewable Energy Program.

MOTION:

On a motion by Scott Liudahl, seconded by Mark Miller, the Utility Committee voted to approve the 2023 Temporary Surcharge Fee of \$50/ton for single stream recyclables so long as the cardboard market remains under \$95/ton beginning March 1, 2023 and ending December 31, 2023 .

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner				X
Bruce Grubb, PT Acting Ast. City Administrator	X	X		
Brenda Derrig, City Engineer	X	X		
Terri Gayhart, Director of Finance	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer				

ATTEST:



\_\_\_\_\_  
 Scott Olson, PE  
 Solid Waste Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Preston  
 Commissioner Piepkorn  
 Commissioner Strand

TO: Finance Committee  
FROM: Scott Olson, Solid Waste Utility Director *SO*  
Jen Pickett, Recycling Coordinator *JP*  
RE: 2023 Temporary Surcharge Request by Minnkota Recycling  
DATE: January 25, 2023

**Background**

On April 1, 2022 the Utility Committee was presented with the results and recommendation following response to the Request for Proposals (RFP) for ***Processing and Marketing Services for Recyclable Materials Delivered by the City of Fargo.*** Minnkota Enviroservices, Inc. (Minnkota) was the lone firm to submit a proposal and was provided a meeting to discuss all information contained within their submittal.

On April 18, 2022 the City Commission approved a three year agreement for these services with Minnkota Enviroservices, Inc.

**Offset Fee**

In late 2022, Solid Waste staff met with Minnkota representatives to discuss the current market and the future outlook of recyclable materials provided by the City. During this meeting Minnkota expressed concerns related to transporting of material, storage capacity issues and material acceptance issues with processing facilities. Both parties agreed to strategies to help alleviate the handling issues which included increased awareness to the public regarding contamination and the City transporting a portion of the recyclables collected to a separate facility in Moorhead operated by Minnkota to ease storage capacity concerns.

On December 22, 2022, Randy Christianson (President, Minnkota Recycling) provided staff with a recent update on recycled material market indexes and provided the attached packet. Indexes show a continued market decline to near-record lows, which has resulted in a significant financial loss for Minnkota Recycling. To offset the loss, Mr. Christianson asked for a temporary offset fee (surcharge) of \$50.00 per ton for single-stream material collected by the City of Fargo (March 1, 2023 – December 31, 2023). Should the OCC market values recover and extend at or above \$95.00 per ton, the City would not be charged the offset fee.

Regionally, similar surcharges will be applied to the City of Moorhead, Clay County, and other entities providing single-stream recycling to Minnkota.

**Funding Plan**

Based on historic single-stream tonnages it is estimated the additional expense to the City will be approximately \$195,000 if the OCC market remains below \$95 for the remainder of 2023. To fund the surcharge expense, staff is recommending reallocating

funds from the Landfill Capital Improvements budget line at the end of 2023 once the extent of the additional expenses are known. To allow for this reallocation staff will wait to perform various infrastructure improvements (roadway improvements) at the Landfill until 2024.

Additionally, staff would like to note the Renewable Energies program within the department is estimating additional revenues of approximately \$250,000 following completion of a new 10-year agreement for the sale of Landfill Gas. Therefor if the reallocation of funds was not approved, the Recycling Division would show a budget deficit reflective of the annual surcharge, while the overall 2023 Solid Waste Budget is expected to remain positive.

**Recommended Motion:**

Authorize Solid Waste staff to work with the City Attorney's Office to amend the 3-year agreement with MinnKota Recycling to include a 10-month surcharge on single-stream material to Minnkota.

Your consideration in this matter is greatly appreciated.

**AMENDMENT TO  
RECYCLING AGREEMENT**

**THIS AMENDMENT TO RECYCLING AGREEMENT** (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF FARGO, a North Dakota municipal corporation, [hereinafter "City" or "Fargo"] and MINNKOTA ENVIROSERVICES, INC., a North Dakota corporation doing business as MINNKOTA RECYCLING [hereinafter "Minnkota"].

**RECITALS:**

**WHEREAS**, the City and Minnkota have entered into a Recycling Agreement dated as of May 2, 2022 [hereinafter "Recycling Agreement"] pertaining to the collection and disposal of recycling certain solid wastes; and,

**WHEREAS**, the parties wish to amend the Recycling Agreement to include certain price adjustments, accordingly;

**NOW, THEREFORE**, in consideration of the foregoing, it is hereby agreed:

- I. ARTICLE 3 of the Recycling Agreement is hereby amended to include the following:**
3. From March 1, 2023, to December 31, 2023, a \$50.00 per ton offset recycling fee will apply to all comingled material delivered to Minnkota. During the calendar year of 2023 for any month the Midwest/Chicago old corrugated cardboard (OCC) market price is \$95.00 or higher the offset recycling fee will not be implemented.
- II. In all other respects, the Recycling Agreement shall remain in full force and effect.**
- III. Effective Date. This Agreement shall be deemed to be effective as of the date and year first above-written or, if the date and year is not completed above, then this Agreement shall be deemed effective on the date last signed below (the "Effective Date").**

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement as follows.

**CITY OF FARGO,**  
a North Dakota Municipal Corporation

\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor


Dated: \_\_\_\_\_

**MINNKOTA ENVIROSERVICES, INC.,**  
a North Dakota corporation d/b/a MINNKOTA RECYCLING

  
\_\_\_\_\_  
Randy Christianson, President

Dated: 1/25/2023

ATTEST:

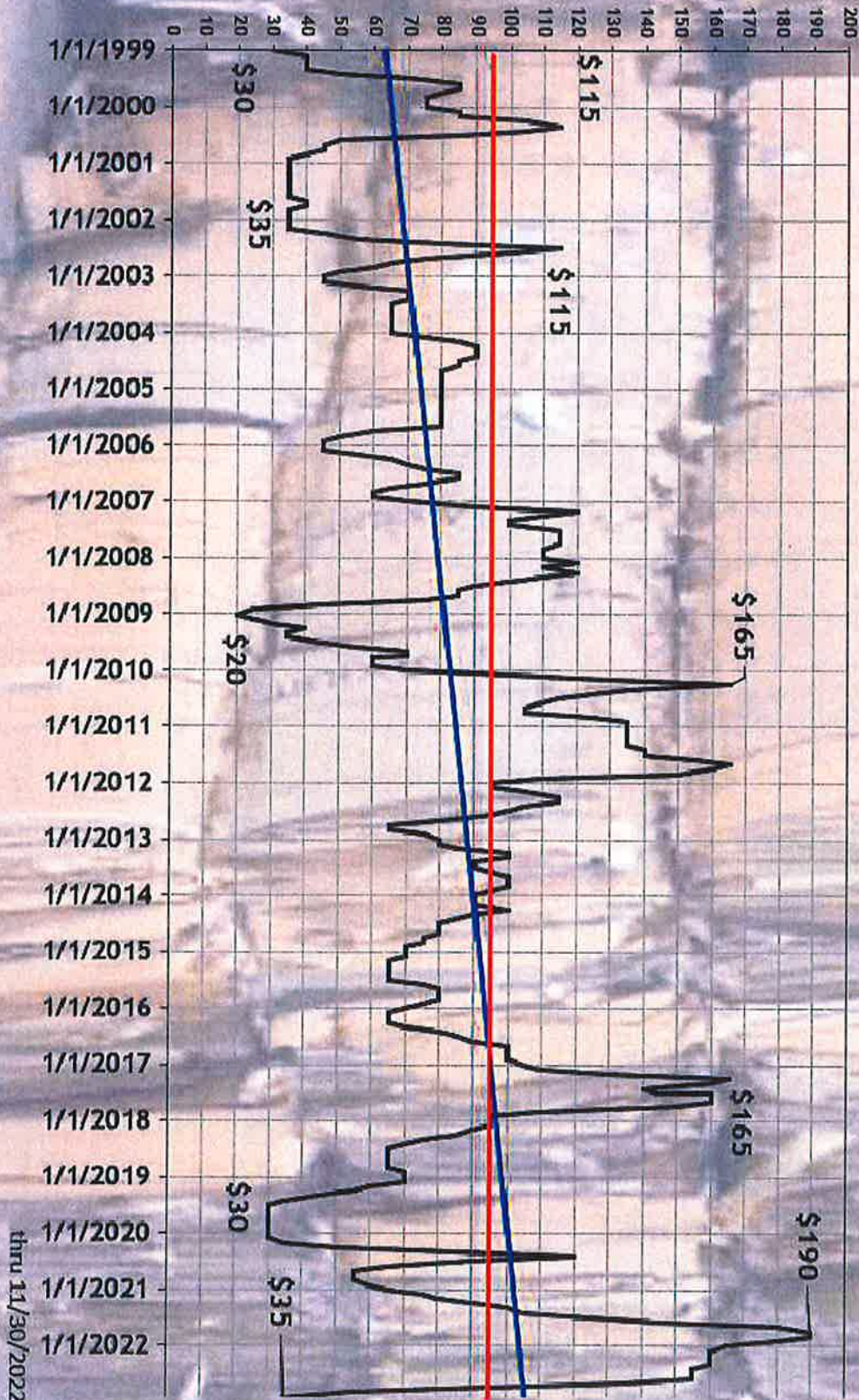
  
\_\_\_\_\_  
Donna Christianson, Vice President

Dated: 1/25/2023



# Old Corrugated Cardboard

## Official Board Market (High Side)



thru 11/30/2022

**From:** Randy Christianson  
**Sent:** Thursday, December 22, 2022 11:08 AM  
**To:** 'Scott Olson' <[solson@FargoND.gov](mailto:solson@FargoND.gov)>  
**Cc:** Mary Aldrich <[MALDRICH@minnkota.biz](mailto:MALDRICH@minnkota.biz)>  
**Subject:** RE: City of Fargo/Minnkota Recycling Agreement.

Scott,  
Thank you for meeting with us. Mary forwarded your email and our request is outlined below.

This situation differs from the request in 2019 for an offset fee with a refund proposal. All markets were significantly depressed in 2019 and we eventually ended up in a pandemic that caused significant disruptions to all industries, particularly businesses deemed non-essential. We felt that the markets would eventually improve over a longer than normal recovery period. We benchmarked the offset fee based on the monthly Midwest/Chicago OCC market value, since that has been the highest percentage of recovered material volume over the years. The City receives this market reporting monthly. Attached is a graph of that OCC official board market since 1999. It shows the 2019 low of \$30 and the significant fluctuation in values in 2020. The OCC market peaked late 2021 at \$190. Market value for November 2022 is \$35. When we responded to the City of Fargo recycling contract RFP in 2022 we took into consideration our experience from 2019 and raised our processing fee rate proposal from \$99.50 per ton to a \$130 per ton starting fee with annual rate increases to \$140 and \$150 per ton in years two and three, respectively.

The current dilemma deals with residential commingled recovered materials. Over the past three months the significant issues are:

- Labor shortages and natural disasters affecting plants utilizing recovered materials.
- Lower market values due to lack of demand. For example, recovered OCC. Not all markets and materials like in 2019, but OCC is a significant driver of value for recovered mixed materials.
- Regional sorting facilities for commingled residential recovered materials that includes mixed glass are now significantly reducing acceptance of commingled recovered materials due to labor shortages and lack of demand, or rejecting mixed material shipments in general.
- High contamination rates of commingled recovered materials. This increases the costs to: 1) process; 2) dispose of residual garbage and; 3) market zero value fibers.
- Due to the above issues, our primary comingled sorting facilities will no longer accept or have significantly reduced volume for baled commingled material. This had a major impact on



transportation costs and traditional methods of shipping comingled recovered materials. This means the use of special walking floor transfer trailers versus standard van trailers. Also, impacts how the trailers must be loaded. It's driven the cost of shipping comingled material from \$30 per ton to \$100 per ton in order to stay current on the daily generation of comingled material in Fargo and Moorhead. Fortunately, we have been receiving support from City of Moorhead to use their transfer station for compacting material into the required compatible transfer trailers.

- MinnKota has been working hard the past 60 days to purchase compaction equipment, walking floor transfer trailers and plant conveying equipment. Current estimated cost is \$750,000 with a 230 day availability window, which puts us to about August of 2023 if everything goes well. One of our major sorting facilities has put us on notice that they will only accept compacted mixed recovered materials after July 31, 2023. That means no baled material that can be shipped on a standard 53' van trailer.
  - Mixed glass in the current comingled recovered material: 1) historically averages about 10% - 24% of the weight; 2) has a negative market value of \$15.30 - \$24.70 per ton and; 3) costs between \$81 - \$107 per ton to separate from other mixed recovered materials. Fargo has a use for recycled mixed glass locally. Our request is to separate mixed glass from residential curbside and use the existing glass recycling drop sites.
- Our proposal on the requested \$50 per ton offset fee is to offset the added handling and shipping costs. Suggest we suspend the fee when monthly Midwest/Chicago OCC market value is \$100 per ton or higher. This information is documented monthly now with the City of Fargo.
  - Historically, OCC has averaged 15% - 31% of comingled recovered materials weight. It historically has a market value, which fluctuates, but generally has a positive impact on the rebate value once separated from mixed material, or helps offset part of the sorting costs of mixed materials.
- We cannot keep current on processing comingled residential curbside generation due to the current market conditions and limitations on shipping materials. The additional shipping and handling expenses are sunk costs until a long-term solution can be completed and market demand improves. Therefore, we are not proposing a refund scenario on the \$50 per ton offset fee.

Options we discussed at our meeting:

- Temporarily landfill excess and high contaminated commingled residential curbside recovered materials. Not a good solution or State approved option.
- The City look to an alternative contractor for commingled curbside recovered materials versus MinnKota.
- City of Fargo, City of Moorhead and MinnKota collaborate on getting through 2023.

We appreciate your cooperation and consideration.

*Randy Christianson, President*

MinnKota EnviroServices, Inc.  
PO Box 1864  
Fargo, ND 58107-1864  
(701) 293-7404 x417

**From:** Mary Aldrich <[MALDRICH@minnkota.biz](mailto:MALDRICH@minnkota.biz)>  
**Sent:** Wednesday, November 23, 2022 2:43 PM  
**To:** Randy Christianson <[rchristianson@beveragewholesalers.com](mailto:rchristianson@beveragewholesalers.com)>  
**Subject:** FW: City of Fargo/Minnkota Recycling Agreement.

**From:** Scott Olson <[solson@FargoND.gov](mailto:solson@FargoND.gov)>  
**Sent:** Wednesday, November 23, 2022 1:54 PM  
**To:** Mary Aldrich <[MALDRICH@minnkota.biz](mailto:MALDRICH@minnkota.biz)>  
**Cc:** Jen Pickett <[JPickett@FargoND.gov](mailto:JPickett@FargoND.gov)>  
**Subject:** City of Fargo/Minnkota Recycling Agreement.

Hi Mary

I planned to get this to you yesterday but got a tad behind, so I apologize.

As you stated in our discussion yesterday Minnkota would like to add a \$50/Ton surcharge fee for all City of Fargo comingled recyclables (I believe it only applied to comingled, please advise if I have this wrong). As discussed we cannot make adjustments to payment or alter the current agreement that's in place without authorization from the City Commission. To do this we would first need to present this to the Finance Committee for their approval and then bring it to the Commission for final approval.

Attached you'll find the amendment put in place in 2019/2020 for the previous agreement between the two parties. It would be our desire that Minnkota provide the same level of detailed supplemental information to justify this request. I understand amendments have

been put in place multiple times over past agreements and that similar information was provided previously. It's unfortunate that this amendment, based on your comments yesterday, will not contain a refund offset of any kind, and if that is still the case I would request that be explained and included in Minnkota's proposal as it's inconsistent with the previous agreement's amendment (attached).

Currently the next available finance committee meeting is scheduled for December 26, though I would imagine this will be moved to a later date in that week given the proximity to Christmas. Pending the urgency Minnkota could request a special meeting be held prior to this date pending availability of the necessary committee members.

If you have any questions or would like to discuss further please feel free to reach out to myself or Jen.

Thanks,

Scott Olson, PE  
Solid Waste Utility Director  
City of Fargo  
Office: (701) 476-4087

#### **Disclaimer**

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CITY OF FARGO  
ENTERPRISE DEPARTMENT  
Fund 531 Solid Waste  
Division 74 Landfill

2023 EXPENSE BUDGET REQUESTS

Acct. Number	Acct. Description	2022 Budget	Request	2023 Budget
433. 43-10	<i>Building Repair</i>	\$20,000		\$20,000
433. 43-20	<i>General Equipment Repair</i>	\$180,000		\$180,000
433. 43-30	<i>Outside Mechanic Services</i>	\$140,000		\$140,000
433. 43-50	<i>Maintenance Service Contracts</i>	\$115,970	(\$4,430)	\$111,540
	<ul style="list-style-type: none"> <li>▪ LFG Generator (\$6.98 for 7,000 hrs) \$49,000</li> <li>▪ Bomag Compactor (\$8.60 for 2,000 hrs) \$17,200</li> <li>▪ Duratech Grinder (\$12.06 for 250 hrs) \$3,015</li> <li>▪ John Deere Loader (No MSC) \$0</li> <li>▪ Komatsu K65 (\$15.62 for 2000 hrs) \$31,240</li> <li>▪ Komatsu D155AX (\$4.65 for 2000 hours) \$9,300</li> <li>▪ John Deere Loader (No MSC) \$0</li> <li>▪ Chiller Systems - CNG Station (Annual) \$1,785</li> </ul>			\$111,540

433.44-20	<b>Equipment &amp; Vehicle Rent</b>			
	▪ Existing & Projected Lease Payments			
	2018 Komatsu D65PXI-18 (Buyout final year)	\$85,000	\$544,300	\$78,000
	2019 John Deere Excavator (2019-2026)	\$49,000		
	2020 Bomag BC772 RBN Compactor (2020-2024)	\$137,000		
	2021 John Deere Loader 644P (2021-2025)	\$46,300		
	2022 John Deere Dozer (est.)	\$100,000		
	2023 Dozer D155/D8 (est.)	\$157,000		
	2023 Loader (est.)	\$48,000		
		<u>\$622,300</u>		
433.62-10	Gasoline	\$9,032		(\$732)
433.62-11	Diesel Fuel	\$265,100		\$1,900
433.62-50	Natural Gas	\$17,887		\$10,113
				\$28,000
433.73-10	<b>Capital Improvements</b>			
	▪ East Landfill Improvements (Fencing, roads, berming, etc.)	\$1,500,000	\$1,500,000	\$1,500,000
433.74-10	<b>Machinery &amp; Equipment</b>			
	▪ Annual replacement rate for new skid steer.	\$5,000	\$5,000	\$5,000
433.74-20	<b>Vehicles</b>			
	▪ Pickup - Landfill Supervisor		\$30,000	\$30,000
433.80-11	<b>Debt Service</b>			
	▪ Other Debt Principal		\$595,000	\$595,000
	▪ Qualified Energy Conservation Bonds <i>Reduced to \$272K for 2023 by Jordan C. (Finance)</i>	\$295,000		
	CNG-LFG Phase I - \$2.8M (2015-2030)			
	▪ CNG-LFG - Next Phase \$3.5M (est.)	\$300,000		
		<u>\$595,000</u>		
433.80-21	Interest on Other Debt	\$	9,350	\$
				9,350
<b>TOTAL LANDFILL</b>		<b>\$ 5,789,345</b>	<b>\$ 84,851</b>	<b>\$ 5,874,196</b>

CITY OF FARGO  
ENTERPRISE DEPARTMENT  
Fund 531 Solid Waste  
Division 76 Recycling

2023 EXPENSE BUDGET REQUESTS

Acct. Number	Acct. Description	2022 Budget	Request	2023 Budget
<b>432.38-78</b>	<b><i>Minnkota Recycling</i></b>	<b>\$470,000</b>		<b>\$470,000</b>
	▪ Transportation and Processing of Comingled Recyclables (Projected 400 tons/month with \$10K offset from seprated material).			
432.62-10	<i>Gasoline</i>	\$5,641	(\$1,141)	\$4,500
432.62-11	<i>Diesel Fuel</i>	\$73,849	(\$63,849)	\$10,000
432.73-10	<i>Construction Recycling</i>	\$50,000		\$50,000
	▪ Maintenance of existing drop sites			
432.74-10	<i>Machinery &amp; Equipment</i>	\$375,000		\$375,000
	▪ Rear Load Containers	\$55,000		
	▪ Front Load Containers	\$95,000		
	▪ 2023 ASL Truck	\$225,000		
		<u>\$375,000</u>		
<b>TOTAL RECYCLING</b>		<b>\$ 1,658,813</b>	<b>\$ (64,990)</b>	<b>\$ 1,593,823</b>

**Cargill  
Landfill Gas Usage**

<b>Year</b>	<b>Monthly Landfill Gas (SCF)</b>	<b>Monthly Average Methane CH4</b>	<b>Monthly MMBTU Total</b>	<b>Yearly Revenue Total</b>
2014	24,261,930			\$89,733.55
2015	17,122,945			\$83,217.51
2016	27,720,730			\$117,130.38
2017	25,612,950			\$108,048.30
2018	21,508,651			\$89,596.06
2019	Project SW 16-03 - Compressor Station Upgrade			
2020	20,311,187			\$98,712.37
2021	18,348,616			\$89,174.28
2022 Ja - M	19,289,550			\$39,061.34
2022 Ju - D	19,798,397	60%	10,604	\$217,768.99
<b>2023</b>	<b>19,000,000</b>	<b>60%</b>	<b>10,260</b>	<b>\$369,360.00</b>

2022 Signed New Landfill Gas Sales Agreement

2023 Projected Revenue

REPORT OF ACTION**UTILITY COMMITTEE**

Location: Solid Waste Division – Landfill

Type: Project SW20-01 Change Orders

Date of Hearing: 2/01/23

Routing	Date
City Commission	2/06/23
Project File	SW20-01

26 a#b

Scott Olson, Solid Waste Utility Director, presented the attached Final Balancing Change Orders for project SW 20-01 Landfill Scale and Maintenance Facility.

On September 17, 2020, the Commission approved the award of Project SW 20-01 in a Multiple Prime Contractor format. The project was awarded to Excavating Inc., Roers' Construction, Manning Mechanical and Superior Electric. Construction on the project began in April, 2021 and is scheduled for completion and startup in November, 2021. Awarded contract bid prices, change orders, and adjusted contract prices are as follows:

Contractor	Contractor Role	Approved Contract Price w/ Previous Change Order	Current Change Orders	Adjusted Contract Price
Excavating Inc.	Civil Construction (CG)	\$1,763,350.00	\$10,697.62	\$1,774,047.62
Roers' Construction	General Contractor (GC)	\$806,161.34	\$(759.60)	\$805,401.74
Manning Mechanical	Mechanical Contractor (MC)	\$195,598.00	\$0.00	\$195,598.00
Superior Electric	Electrical Contractor (EC)	\$231,136.99	\$0.00	\$231,136.99
		\$2,996,246.33	\$9,938.02	\$3,006,184.35

The final balancing change order to the Civil Contract is for final quantity adjustments to the unit price contract. The final balancing change order for the General Contract is a price deduct for a damaged cabinet that was installed. Detailed information on each is attached.

**MOTION:**

On a motion by Ben Dow, seconded by Troy Hall, the Utility Committee voted to approve the attached Final Balancing Change Orders and final contract price for SW 20-01 Landfill Scale and Maintenance Facility.

COMMITTEE:	Present	Yes	No	Unanimous
Denise Kolpack, City Commissioner				X
Bruce Grubb, PT Acting Asst. City Administrator	X	X		
Brenda Derrig, City Engineer	X	X		
Terri Gayhart, Director of Finance	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer				

ATTEST:



Scott Olson, PE  
Solid Waste Utility Director

C: Tim Mahoney, Mayor  
Commissioner Preston  
Commissioner Piepkorn  
Commissioner Strand



To: Utility Committee  
 From: Scott Olson, Solid Waste Utility Director *So*  
 Date: January 26, 2023  
 Subject: Project SW 20-01 – Final Balancing Change Orders

On September 17, 2020, the Commission approved the award of Project SW 20-01 in a Multiple Prime Contractor format. The project was awarded to Excavating Inc., Roers' Construction, Manning Mechanical and Superior Electric as shown below. Funding for construction of Project SW 20-01 has been provided for in the 2020-2021 Solid Waste Division budget.

Contract	Contractor	Substantial Completion Date	Bid Amount
Civil Construction (CC)	Excavating Inc.	October 9, 2021	\$1,667,745.40
General Construction (GC)	Roers' Construction	October 9, 2021	\$810,000.00
Mechanical Construction (MC)	Manning Mechanical	October 9, 2021	\$198,000.00
Electrical Construction (EC)	Superior Electric	October 9, 2021	\$224,059.00
		<b>Total</b>	<b>\$2,899,804.40</b>

With previous Change Order approval, the current contract amounts and substantial completion dates are as follows:

Contract	Contractor	Current Substantial Completion Date	Current Contract Amount
Civil Construction (CC)	Excavating Inc.	December 31, 2021	\$1,763,350.00
General Construction (GC)	Roers' Construction	December 15, 2021	\$806,161.34
Mechanical Construction (MC)	Manning Mechanical	December 15, 2021	\$195,598.00
Electrical Construction (EC)	Superior Electric	December 15, 2021	\$231,136.99
		<b>Total</b>	<b>2,996,246.33</b>

With Change Order approval, the updated contract amounts and completion dates would be:

Contract	Contractor	FBCO Amount	Final Contract Amount
Civil Construction (CC)	Excavating Inc.	\$10,697.62	\$1,774,047.62
General Construction (GC)	Roers' Construction	\$(759.60)	\$805,401.74
Mechanical Construction (MC)	Manning Mechanical	\$0.00	\$195,598.00
Electrical Construction (EC)	Superior Electric	\$0.00	\$231,136.99
	<b>Total</b>		<b>\$3,006,184.35</b>

**Detailed Summary of Final Contract Adjustments**

The final project cost impacts to the **Civil Contractor** are as follows:

**CC – No 5 FBCO**

The final balancing change order for the Civil contract is to account for quantity adjustments based on unit prices for each bid item. Bid items to be adjusted for final balancing change order are shown below:

Item	Description	Unit	Bid Quantity	Unit Bid Rate	Cumulative Quantity	Cumulative Amount	Cumulative Difference from Bid Amount
<b>Miscellaneous</b>							
3	Common Excavation	CY	3,560.00	\$4.95	3,168.00	\$15,681.60	-\$1,940.40
4	Embankment	CY	850.00	\$6.85	546.00	\$3,740.10	-\$2,082.40
8	Sediment Control Log 6" to 8" Dia	LF	350.00	\$2.20	133.00	\$292.60	-\$477.40
11	Waste Excavation (replaced with onsite fill)	CY	1,300.00	\$9.15	4,857.00	\$44,441.55	\$32,546.55
							<b>\$28,046.35</b>
<b>Sanitary Sewer</b>							
15	F&I Pipe SCH 40 - 6" Dia PVC	LF	575.00	\$35.20	657.00	\$23,126.40	\$2,886.40
							<b>\$2,886.40</b>
<b>Water Main</b>							
							<b>\$0.00</b>
<b>Storm Sewer</b>							
27	F&I Inlet - Round (RDI) Reinf Conc	EA	3.00	\$2,420.00	1.00	\$2,420.00	-\$4,640.00
28	F&I Pipe 12" Dia. Reinf Conc	LF	84.00	\$46.20	172.00	\$7,946.40	\$4,065.60
30	F&I Pipe 18" Dia Reinf Conc	LF	87.00	\$68.20	123.00	\$8,388.60	\$2,455.20
31	F&I Pipe 30" Dia Reinf Conc	LF	139.00	\$106.70	0.00	\$0.00	-\$14,831.30
							<b>-\$13,150.50</b>
<b>Paving</b>							
36	Excavation	CY	600.00	\$5.15	417.00	\$2,147.55	-\$942.45
37	Pavement Removal	SY	115.00	\$21.25	0.00	\$0.00	-\$2,443.75
38	Controlled Fill	CY	5,960.00	\$4.45	5,024.00	\$22,356.80	-\$4,165.20
39	Subcut	CY	900.00	\$5.95	3,334.00	\$19,837.30	\$14,482.30
40	Subgrade Preparation	SY	9,751.00	\$2.50	10,666.00	\$26,665.00	\$2,287.50
41	F&I Woven Geotextile	SY	9,751.00	\$2.15	10,666.00	\$22,931.90	\$1,967.25
42	F&I Class 5 Agg - 8" Thick	SY	9,420.00	\$8.75	10,601.00	\$92,758.75	\$10,333.75
44	F&I Curb & Gutter Standard (Type II)	LF	40.00	\$33.00	0.00	\$0.00	-\$1,320.00
46	PCC Pavement (8 Inch)	SY	5,902.00	\$62.65	4,695.00	\$294,141.75	-\$75,618.55
47	F&I Aggregate for Asph Pavement FAA 43	TON	1,512.00	\$54.95	1,974.60	\$108,504.27	\$25,419.87
48	F&I Asphalt Cement PG 58H-34	TON	88.00	\$671.00	122.15	\$81,962.65	\$22,914.65
							<b>-\$7,084.63</b>
<b>Landscaping</b>							
							<b>\$0.00</b>
							<b>\$10,697.62</b>

Final quantities are attached to the Change Order for your reference.

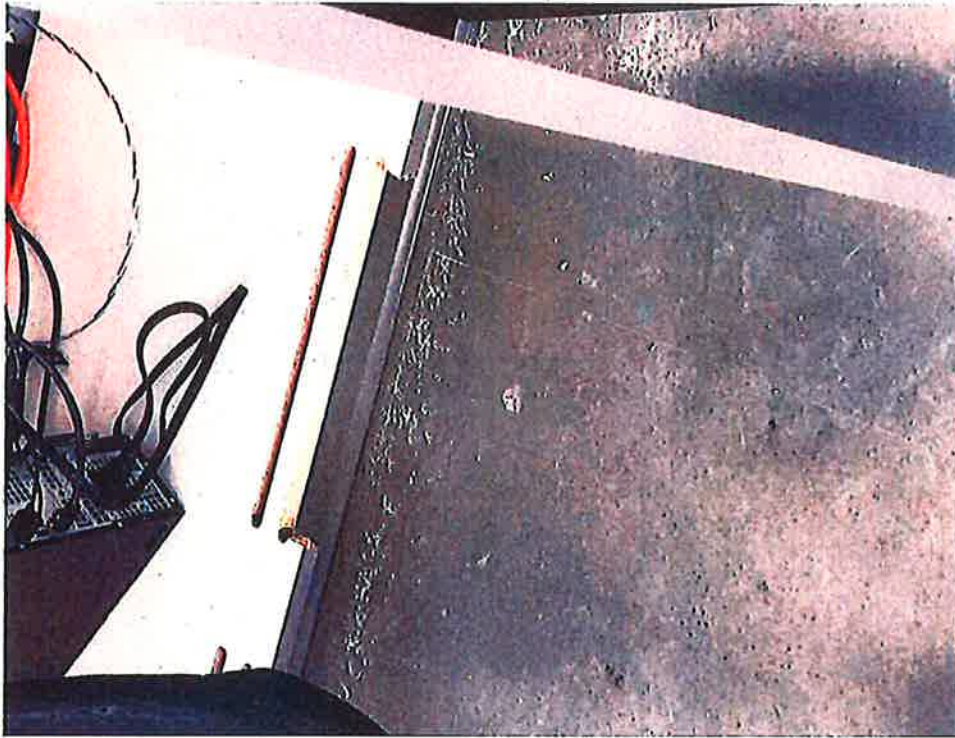
Cost: **\$10,697.42**

Reason: **Final Quantity Adjustments**

The final project cost impacts to the **General Contractor** are as follows:

**GC – No 6 FBCO**

Following final inspection of the scale house interior it was discovered that a lower panel inside a base cabinet was damaged. Rather than remove the countertop and replace the cabinet, and in order to complete the scale house start-up, the City requested Roers to propose a solution. Roers then elected to deduct the price of the cabinet to compensate for the damage. The damage does not affect the performance of the cabinet nor is it visible to the public.



Cost: \$(759.60)

Reason: Deduct for Minor Cabinet Damage

The project cost and time impacts to the **Mechanical Contractor** recommended changes are as follows:

**MC – FBCO**

Cost: \$0.00

Reason: NA – Final Payment Complete

**EC-FBCO**

Cost: \$0.00

Reason: NA – Final Payment Complete

To date, change orders have totaled 3.67% of total construction costs.

**Process for Amending the Contract Documents; Changes in the Work**

As provided in the specifications, and to avoid substantial construction schedule delays, Work Change Directives (WCD) were issued for the additional work described above. Acceptance of WCD's by Solid Waste (City) staff are provided after review and negotiation following Contractor proposal requests and submittal. WCD's are incorporated in subsequent Change Orders through formal Utility Committee and City Commission approval on this project.

**SUGGESTED MOTION:**

Approve the Final Balancing Change Orders to the contracts as described above for project SW 20-01.

**Attachment**

cc: Steve Sprague, City Auditor  
Randy Hanson, Wenck Associates  
Marcia Pulczynski, Stone Group Architects  
Scott Anderson, Landfill Supervisor

Date of Issuance: 1/12/23

Effective Date: 1/12/23

Owner: City of Fargo Division of Solid Waste

Owner's Contract No.: SW20-01

Contractor: Excavating, Inc - Fargo

Contractor's Project No. 2002:

Engineer: Stantec/Stone Group Architects

Engineer's Project No.: 227701511

Project: Fargo Scale &amp; Maintenance Facility

Contract Name: Landfill Scalehouse &amp; Maintenance Facility

The Contract is modified as follows upon execution of this Change Order:

Final balancing change order for quantity adjustments.

Attachments: None

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ 1,667,745.40	Original Contract Times: Substantial Completion: 10/15/2021 Ready for Final Payment: 11/15/2021 days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>4</u> : \$ 95,604.60	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : Substantial Completion: 77 Calendar Days Ready for Final Payment: 181 Calendar Days days
Contract Price prior to this Change Order: \$ 1,763,350.00	Contract Times prior to this Change Order: Substantial Completion: 12/31/2021 Ready for Final Payment: 6/15/2022 days or dates
Increase of this Change Order: \$ 10,697.62	[Increase] [Decrease] of this Change Order: Substantial Completion: 0 Ready for Final Payment: 0 days or dates
Contract Price incorporating this Change Order: \$ 1,774,047.62	Contract Times with all approved Change Orders: Substantial Completion: 12/31/2021 Ready for Final Payment: 6/15/2022

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By:   
Engineer (if required)By: \_\_\_\_\_  
Owner (Authorized Signature)By:   
Contractor (Authorized Signature)

Title: Project Manager

Title

Title: Estimator/Project Manager

Date: 1/12/23

Date

Date: January 12, 2023

**City of Fargo**  
**Division of Solid Waste**  
**Scale House and Maintenance Building Construction**  
**Pay Application Tracking**

1/3/2023

Item	Description	Unit	Bid Quantity	Unit Bid Rate	Cumulative Quantity	Cumulative Amount	Cumulative Difference from Bid Amount
<b>Miscellaneous</b>							
1	Field Engineering	LS	1.00	\$26,300.00	1.00	\$26,300.00	\$0.00
2	Topsoil - Strip	LS	1.00	\$5,600.00	1.00	\$5,600.00	\$0.00
3	Common Excavation	CY	3,560.00	\$4.95	3,168.00	\$15,681.60	-\$1,940.40
4	Embankment	CY	850.00	\$6.85	546.00	\$3,740.10	-\$2,082.40
5	Inlet Protection - Existing Inlet	EA	6.00	\$181.50	6.00	\$1,089.00	\$0.00
6	Inlet Protection - New Inlet	EA	4.00	\$220.00	4.00	\$880.00	\$0.00
7	Silt Fence	LF	975.00	\$2.50	975.00	\$2,437.50	\$0.00
8	Sediment Control Log 6" to 8" Dia	LF	350.00	\$2.20	133.00	\$292.60	-\$477.40
9	Temp Construction Entrance	EA	2.00	\$2,500.00	2.00	\$5,000.00	\$0.00
10	Stormwater Management	LS	1.00	\$3,000.00	1.00	\$3,000.00	\$0.00
11	Waste Excavation (replaced with onsite fill)	CY	1,300.00	\$9.15	4,857.00	\$44,441.55	\$32,546.55
12	Traffic Control - Minor	LS	1.00	\$1,485.00	1.00	\$1,485.00	\$0.00
13	Scales and Scale Pit	LS	3.00	\$194,725.00	3.00	\$584,175.00	\$0.00
						<b>\$694,122.35</b>	<b>\$28,046.35</b>
<b>Sanitary Sewer</b>							
14	Connect Pipe to Exist Pipe	EA	2.00	\$1756.15	2.00	\$3,512.30	\$0.00
15	F&I Pipe SCH 40 - 6" Dia PVC	LF	575.00	\$35.20	657.00	\$23,126.40	\$2,886.40
16	F&I Sewer Cleanout	EA	4.00	\$808.50	4.00	\$3,234.00	\$0.00
17	Connect Sewer Service to Building Service	EA	2.00	\$605.00	2.00	\$1,210.00	\$0.00
						<b>\$31,082.70</b>	<b>\$2,886.40</b>
<b>Water Main</b>							
18	Connect Pipe to Exist Pipe	EA	3.00	\$5,720.00	3.00	\$17,160.00	\$0.00
19	Bore 2" Dia. Water Service	LF	270.00	\$61.00	270.00	\$16,470.00	\$0.00
20	F&I Pipe 2" Dia Water Service	LF	1,095.00	\$24.20	1,095.00	\$26,499.00	\$0.00
21	F&I CS & Box 2" Dia	EA	3.00	\$1012.00	3.00	\$3,036.00	\$0.00
						<b>\$63,165.00</b>	<b>\$0.00</b>
<b>Storm Sewer</b>							
22	Temp Pumping	LS	1.00	\$20,000.00	1.00	\$20,000.00	\$0.00
23	Connect Pipe to Existing Structure	EA	2.00	\$1,045.00	2.00	\$2,090.00	\$0.00
24	F&I Manhole 4' Dia Reinf Conc	EA	3.00	\$4,840.00	3.00	\$14,520.00	\$0.00
25	F&I Outlet Control Structure	EA	2.00	\$13,200.00	2.00	\$26,400.00	\$0.00
26	Sediment Collection System	LS	1.00	\$23,320.00	1.00	\$23,320.00	\$0.00
27	F&I Inlet - Round (RDI) Reinf Conc	EA	3.00	\$2,420.00	1.00	\$2,420.00	-\$4,840.00
28	F&I Pipe 12" Dia. Reinf Conc	LF	84.00	\$46.20	172.00	\$7,946.40	\$4,065.60
29	F&I Pipe 15" Dia Reinf Conc	LF	214.00	\$55.00	214.00	\$11,770.00	\$0.00
30	F&I Pipe 18" Dia Reinf Conc	LF	87.00	\$68.20	123.00	\$8,388.60	\$2,455.20
31	F&I Pipe 30" Dia Reinf Conc	LF	139.00	\$106.70	0.00	\$0.00	-\$14,831.30
32	F&I Flared End Section 12" Dia Reinf Conc	EA	2.00	\$1,870.00	2.00	\$3,740.00	\$0.00
33	F&I Flared End Section 15" Dia Reinf Conc	EA	1.00	\$2150.50	1.00	\$2,150.50	\$0.00
34	F&I Rip Rap Rock	CY	12.00	\$165.00	12.00	\$1,980.00	\$0.00
35	F&I 6" PVC Dralntile with Cleanout	LF	620.00	\$61.60	620.00	\$38,192.00	\$0.00
						<b>\$162,917.50</b>	<b>-\$13,150.50</b>
<b>Paving</b>							
36	Excavation	CY	600.00	\$5.15	417.00	\$2,147.55	-\$942.45
37	Pavement Removal	SY	115.00	\$21.25	0.00	\$0.00	-\$2,443.75
38	Controlled Fill	CY	5,960.00	\$4.45	5,024.00	\$22,356.80	-\$4,165.20
39	Subcut	CY	900.00	\$5.95	3,334.00	\$19,837.30	\$14,482.30
40	Subgrade Preparation	SY	9,751.00	\$2.50	10,666.00	\$26,665.00	\$2,287.50
41	F&I Woven Geotextile	SY	9,751.00	\$2.15	10,666.00	\$22,931.90	\$1,967.25
42	F&I Class 5 Agg - 8" Thick	SY	9,420.00	\$8.75	10,601.00	\$92,758.75	\$10,333.75
43	Remove Curb & Gutter	LF	40.00	\$24.00	40.00	\$960.00	\$0.00
44	F&I Curb & Gutter Standard (Type II)	LF	40.00	\$33.00	0.00	\$0.00	-\$1,320.00
45	F&I Sidewalk 4" Thick Reinf Conc	SY	65.00	\$68.30	65.00	\$4,439.50	\$0.00
46	PCC Pavement (8 inch)	SY	5,902.00	\$62.65	4,695.00	\$294,141.75	-\$75,618.55
47	F&I Aggregate for Asph Pavement FAA 43	TON	1,512.00	\$54.95	1,974.60	\$108,504.27	\$25,419.87
48	F&I Asphalt Cement PG 58H-34	TON	88.00	\$671.00	122.15	\$81,962.65	\$22,914.65
49	Casting to Grade	EA	2.00	\$350.00	2.00	\$700.00	\$0.00
						<b>\$677,405.47</b>	<b>-\$7,084.63</b>
<b>Landscaping</b>							
50	Project Landscaping	LS	1.00	\$49,750.00	1.00	\$49,750.00	\$0.00
						<b>\$49,750.00</b>	<b>\$0.00</b>
							<b>\$10,697.62</b>



# **AIA® Document G701™ – 2017**

## Change Order

**PROJECT: (Name and address)**  
Landfill Scale and Maintenance Facility  
Fargo, North Dakota

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: September 29, 2020

**CHANGE ORDER INFORMATION:**  
Change Order Number: G-006  
Date: January 13, 2023

**OWNER: (Name and address)**  
City of Fargo  
225 Fourth Street North  
Fargo, ND 58102

**ARCHITECT: (Name and address)**  
Stone Group Architects, Inc.  
600 East 7th Street  
Sioux Falls, SD 57103

**CONTRACTOR: (Name and address)**  
Roers Construction LLC  
200 45th Street South  
Fargo, ND 58103

### THE CONTRACT IS CHANGED AS FOLLOWS:

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

Credit for damaged cabinet at scale house. Deduct \$759.60

The original Contract Sum was	\$ 810,000.00
The net change by previously authorized Change Orders	\$ -3,838.66
The Contract Sum prior to this Change Order was	\$ 806,161.34
The Contract Sum will be decreased by this Change Order in the amount of	\$ 759.60
The new Contract Sum including this Change Order will be	\$ 805,401.74

The Contract Time will be unchanged by Zero (0) days.

The new date of Substantial Completion will be

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Stone Group Architects, Inc.

**ARCHITECT (Firm name)**

*Marcia Pulczynski*

**SIGNATURE**

Marcia Pulczynski, Architect

**PRINTED NAME AND TITLE**

1.17.23

**DATE**

Roers Construction LLC

**CONTRACTOR (Firm name)**

*David Wood*

**SIGNATURE**

David Wood, Construction Executive

**PRINTED NAME AND TITLE**

1/16/2023

**DATE**

City of Fargo

**OWNER (Firm name)**

*Timothy Mahoney*

**SIGNATURE**

Timothy Mahoney, Mayor

**PRINTED NAME AND TITLE**

**DATE**



200 S 45th St  
FARGO, ND 58103  
Ph : (701)356-5050

## Change Request

To: Marcia Pulczynski (Stone Group  
Stone Group

Number: ~~10~~ 6

Date: 1/9/23

Job: 20-007 Fargo Landfill Maint & Scale

Phone:

Description: cabinet credit

We are pleased to offer the following specifications and pricing to make the following changes:

Credit for damaged cabinet

Description	Labor	Material	Equipment	Subcontract	Other	Price
ARCHITECTURAL CASEWORK		\$-759.60				\$-759.60
					Subtotal:	\$-759.60
					Total:	\$-759.60

If you have any questions, please contact me at 701-356-5050.

Submitted by: Tyler Miller  
Roers Construction Company

Approved by: \_\_\_\_\_  
Date: \_\_\_\_\_



**Project/Job #:** Landfill Maintenance - Replace Cabinet

**Designer:** DT **Date:** 11/17/2022

Bill To		Ship To	
<b>Name:</b>	Roers	<b>Name:</b>	Fargo Landfill Maintenance - Scale House
<b>Contact:</b>	Tyler Miller	<b>Contact:</b>	
<b>Address:</b>	200 45th St S	<b>Address:</b>	950 Aggregate Industries Dr. N
<b>City, ST Zip:</b>	Fargo, ND 58103	<b>City, ST Zip:</b>	Fargo, ND 58102
<b>Phone 1:</b>	701-356-5050	<b>Phone 1:</b>	
<b>Email:</b>	tmiller@roers.com	<b>Email:</b>	

Item Description	Total
<i>Current Estimated Production Lead-time: (From Date Contract Awarded) 6 weeks</i>	
<b>Casework Bid Includes: (Replace Cabinet #9) does not include doors (Delivery to Job Site Only)</b>	<b>\$ 759.60</b>
Laminate Clad Cabinetry with .5mm PVC Edging - Color: Wilsonart "Pewter Mesh" #4878-38	
White Melamine Interiors	
Unfinished Toe Recess Typical, Excludes Trim - Vinyl Base Installed & Provided by Others	
Cabinet Vent Slots in Cabinet Bottom at Toe Recess	

<b>Acknowledge Addendum</b>		
<b>Price of Material is Based on Today's Pricing and Subject to Change at the Time of Purchasing Materials</b>		
Limited warranty on items not installed by Braaten Cabinets. Price is for items as listed. Price does include delivery to address indicated unless noted differently. Dimension verification is by others. Price does not include AWI labels, bid bond, tax, LEED certifications, and install. 50% Payment required upon order placement, payment in full required upon delivery. Shipping Freight on Board to Site is for a Full Only. Braaten Cabinets is not AWI certified.		
Approved shop drawings take precedence over bid specifications and architectural drawings. We will not be responsible for conflicts between the approved shop drawings and architectural intent.		
Any Questions Please Contact: David Turner at david.turner@braatencabinets.com or By Phone: 701.428.6074		
<b>PROPOSAL IS GOOD FOR 30 DAYS FROM DATE LISTED ABOVE</b>		
<b>ANY DIFFERENCE IN PRICING WILL BE ADVISED TO THE CONTRACTOR VIA A CHANGE ORDER</b>		
<b>Proposal Approval</b>		
By signing below, I acknowledge that the above pricing and descriptions are ready for order. Once I sign the Contract Agreement (separate document), and make my down payment (or payment in full, depending on order size), the order will officially be queued for production. Signing this document does NOT start the production/build process, but does obligate you to the project with Braaten Cabinets.		
PRINT NAME	SIGNATURE	DATE
DESIGNER/SALES PRINT NAME	DESIGNER/SALES SIGNATURE	DATE

COVER SHEET  
CITY OF FARGO PROJECTS

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of project as it will appear in the contract:

Sidewalk & Shared Use Path Rehab/Reconstruction

(27)

Project No. SR-23-A

Call For Bids	<u>February 6</u>	<u>2023</u>
Advertise Dates	<u>February 15, 22 &amp; March 1</u>	<u>2023</u>
Bid Opening Date	<u>March 15</u>	<u>2023</u>
Substantial Completion Date	<u>September 22</u>	<u>2023</u>
Final Completion Date	<u>October 13</u>	<u>2023</u>

<u>N/A</u>	PWPEC Report (Attach Copy)
<u>X</u>	Engineer's Report (Attach Copy)
<u>X</u>	Direct City Auditor to Advertise for Bids
<u>X</u>	Bid Quantities (Attach Copy for Auditor's Office Only)
<u>N/A</u>	Notice to Property Owners (Dan Eberhardt)

Project Engineer Brandon Beaudry

Phone No. (701) 241-1545

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

<u>N/A</u>	Create District (Attach Copy of Legal Description)
<u>N/A</u>	Order Plans & Specifications
<u>N/A</u>	Approve Plans & Specifications
<u>N/A</u>	Adopt Resolution of Necessity
<u>N/A</u>	Approve Escrow Agreement (Attach Copy for Commission Office Only)
<u>N/A</u>	Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT  
SIDEWALK & SHARED USE PATH  
REHAB/RECONSTRUCTION  
PROJECT NO. SR-23-A  
VARIOUS AREAS CITY WIDE**

**Nature & Scope**

This project is for sidewalk reconstruction and curb ramps located throughout the City of Fargo

**Purpose**

To repair existing sidewalk and curb ramps ordered by the City Commission.

**Feasibility**

The estimated cost of construction is \$866,330.00. The cost breakdown is as follows:

<b>Assessed Sidewalks</b>		
<b>Construction Cost</b>		<b>\$548,200.00</b>
<b>Fees</b>		
Admin	4%	\$21,928.00
Contingency	5%	\$27,410.00
Engineering	10%	\$54,820.00
Interest	4%	\$21,928.00
Legal	3%	\$16,446.00
<b>Total Estimated Cost</b>		<b>\$690,732.00</b>
<b>Funding</b>		
Sidewalk Assessments	100.00%	\$690,732.00

**City Paid Sidewalks**

<b>Construction Cost</b>		\$318,130.00
<b>Fees</b>		

Admin	4%	\$12,725.20
Contingency	5%	\$15,906.50
Engineering	10%	\$31,813.00
Interest	4%	\$12,725.20
Legal	3%	\$9,543.90

<b>Total Estimated Cost</b>		<b>\$400,843.80</b>
-----------------------------	--	---------------------

**Funding**

Sales Tax Funds - Infrastructure - 420	100.00%	\$400,843.80
--	---------	--------------

**Project Funding Summary**

Sidewalk Assessments	63.28%	\$690,732.00
Sales Tax Funds - Infrastructure - 420	36.72%	\$400,843.80

<b>Total Estimated Project Cost</b>		<b>\$1,091,575.80</b>
-------------------------------------	--	-----------------------

**This project does not have any alternate or optional containers.**

We believe this project to be cost effective.



*Thomas Knakmuhs*  
 Thomas Knakmuhs, PE  
 Assistant City Engineer

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. QR-22-A1

Type: Bid Award

Location: North Broadway Bridge

Date of Hearing: 1/30/2023

Routing

City Commission

PWPEC File

Project File

Date

2/6/2023

X

Eric Hodgson

28

The Committee reviewed the accompanying correspondence from Project Manager, Eric Hodgson, regarding the bid award for the North Broadway Bridge Demolition project.

The project had only one bidder and the bid came in at \$849,941. The Consultant reached out to the interested parties to understand the higher bid and why there was not more interest in the project. The reason was due to the high risk involved given the unstable nature of the bridge and surrounding soils. The Contractor would need to use specialized equipment/processes for the demolition adding to the project cost. Staff decided that the solitary bid was a reasonable bid even though it was higher than anticipated.

The Capital Improvement Plan (CIP) programmed \$378,000 in Sales Tax to pay for our share (50%) of the project. We now expect that number to be closer to \$500,000 for an increase of \$122,000.

On a motion by Bruce Grubb, seconded by Brenda Derrig, the Committee voted to recommend approval of the bid award in the amount of \$849,941 for Project No. QR-22-A1, in which Fargo's share is 50%.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC to concur with Clay County's recommended low bid award to Red Stone Construction, LLC, in the amount of \$849,941, for Project No. QR-22-A1, in which Fargo's share is 50%.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Clay County & City of Fargo Sales Tax

Developer meets City policy for payment of delinquent specials  
 Agreement for payment of specials required of developer  
 Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A


COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Michael Redlinger, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Terri Gayhart, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Eric Hodgson, Civil Engineer II  
**Date:** January 30, 2023  
**Re:** North Broadway Bridge Demolition – Project No. QR-22-A1

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### **Background:**

On Tuesday January 24, 2023, there was a bid opening for the North Broadway Bridge Demolition Project No. QR-22-A1. This project is a collaboration between the City of Fargo and Clay County. The project costs including construction, inspection, and testing are to be split between these two stakeholders.

The project had only one bidder. That bid came in at \$849,941, which was higher than anticipated. The Design Consultant for this project reached out to the interested parties to understand the reason for the higher bid, and why there wasn't more interest in this project. The reason was due to the high risk involved given the unstable nature of the bridge and surrounding soils. The Contractor would need to use specialized equipment/processes for the demolition adding to the project cost. After further internal consideration, it was decided that the solitary bid was a reasonable bid even though it was higher than anticipated.

Originally, the City of Fargo set aside \$378,000 in Sales Tax to pay for our contribution to the project. We now anticipate that number to be closer to \$500,000. That would increase Fargo's Sales Tax contribution by approximately \$122,000 from what was previously set aside.

### **Recommended Motion:**

Approve the bid award in the amount of \$849,941 for Project No. QR-22-A1, and the increase the City of Fargo's Sales Tax contribution from \$378,000 to \$500,000. A net increase of \$122,000.

EBH/klb

**HIGHWAY DEPARTMENT**

Justin P. Sorum, County Engineer  
Office Telephone: (218) 299-5099  
Fax: (888) 259-8757

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Jeremy Gorden  
Division Engineer-Transportation  
City of Fargo Traffic Engineering  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

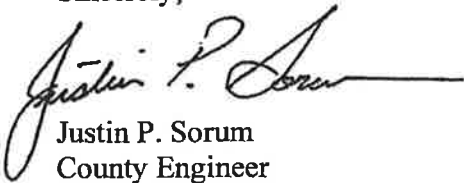
RE: North Broadway Bridge Removal

Jeremy,

On January 24<sup>th</sup>, 2023 Clay County opened bids for the North Broadway Bridge Removal Project (SAP 014-601-009). We received one bid from Redstone Construction, LLC, in the amount of \$849,941.00. After conferring with several people from MNDOT and multiple contractors we believe that this is a competitive bid. We would like to move forward with awarding this project to Redstone Construction, LLC, and am looking for the City of Fargo's concurrence with this.

With the bridge in its current state I do think it is imperative that this structure is removed, and pushing this project back any further could result in higher costs to remove it.

Sincerely,



Justin P. Sorum  
County Engineer

2951 41 1/2 ST SO  
Moorhead, MN 56560

An Equal Opportunity Employer

# Contract SAP 014-601-009 (CSAH 1, Bridge Removal) - Bid Abstract

Report Date 1/24/2023 SAP 014-601-009

State  
SAP 014-601-009

Base Bid  
Participating

Bid Release  
12/26/2022

Line		Redstone Construction, LLC		
Item	Quantity	Price	Total	
1 2021.501 MOBILIZATION (LUMP SUM)	1	\$165,000.00	\$165,000.00	
2 2101.501 CLEARING & GRUBBING (LS)	1	\$5,000.00	\$5,000.00	
3 2104.503 REMOVE GUARDRAIL (L F)	480	\$6.00	\$2,880.00	
4 2104.518 REMOVE CONCRETE APPROACH PANEL (S F)	1,360	\$6.00	\$8,160.00	
5 2104.601 REMOVE REGULATED WASTE MATERIAL (BRIDGE) (LUMP SUM)	1	\$1.00	\$1.00	
6 2104.609 REMOVE DEBRIS (TON)	10	\$245.00	\$2,450.00	
7 2442.501 REMOVE EXISTING BRIDGE (LUMP SUM)	1	\$656,000.00	\$656,000.00	
8 2533.503 PORTABLE PRECAST CONC BARRIER DES 8337 (L F)	75	\$100.00	\$7,500.00	
9 2575.501 TURF ESTABLISHMENT (LS)	1	\$2,950.00	\$2,950.00	
			Total:	\$849,941.00

Redstone Construction, LLC  
\$849,941.00



REPORT OF ACTION**UTILITY COMMITTEE**

Project No. WA2154

Type: Regional Water Distribution  
Extensions

Location: Northwest Undeveloped Areas of Fargo

Date of Hearing: 2/1/2023

Routing	Date
City Commission	2/6/2023
Project File	

Troy Hall, Water Utility Director, presented the attached memo regarding a proposed amendment to AE2S Task Order No. 18. The amendment is for additional pipeline locating services with Project WA2154, Regional Water Distribution Extensions. These costs are a pass-through invoice to help identify the exact location of a pipeline from the Effluent Reuse Facility (ERF) on the Water Reclamation campus that transfers Reverse Osmosis water to the Casselton ethanol plant.

Project WA2154 is a joint project between the Engineering Department and the Water Utility. At this time, Project WA2154 is just for engineering services and has 60 percent cost-share (grant) funding from the North Dakota Department of Water Resources (DWR). For the full construction project, the Water Utility will apply for additional DWR grant funding, per DWR protocol. The local share of construction costs will be paid through Water Utility Infrastructure Sales Tax (Fund 450) and Special Assessments.

**MOTION:**

On a motion by Ben Dow, seconded by Brenda Derrig, the Utility Committee voted to approve Amendment No.1 to AE2S Task Order #18 in the amount of \$13,905.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				X
				Proxy
Denise Kolpack, City Commissioner				
Terri Gayhart, Director of Finance	X			
Brian Ward, Water Plant Supt.	X			
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, Temp. Asst. City Administrator	X			
Scott Liudahl, City Forester	X			
James Hausauer, Water Recl. Utility Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			
Dan Portlock, Water Utility Engineer				
Scott Olson, Solid Waste Utility Director	X			

ATTEST:

  
 Troy B. Hall  
 Water Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston

**MEMORANDUM**  
January 27, 2023

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**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** Amendment No. 1 to AE2S Task Order No. 18 – Regional Water Dist. Extension

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Attached, please find a proposed task order amendment for AE2S Task Order No. 18. This amendment is in the amount of \$13,905 and is a pass-through cost for services from Eagle River Utility Solutions. These services were for additional potholing and field investigation to verify the location of the 12-inch Theraldson Ethanol water reuse pipeline. The additional services were completed at the request of the Engineering Department. If approved, the new task order total amount will be \$351,905 and is under a 60-percent cost-share (grant) from the North Dakota Department of Water Resources.

The Engineering Department and Water Utility are partnering on a project in north Fargo to loop water main piping to the north and across I-29. This pipe will tie into existing water main to improve water pressure and water age for growth in northwest Fargo: industrial, residential, and commercial.

**Plan of Financing**

The engineering for the Regional Water Extensions project is under a 60-percent cost-share (grant) from the North Dakota Department of Water Resources. For the full project, Water Utility staff will pursue further grant funding around the time of project bidding. The local cost share of the project will be paid with Infrastructure Sales Tax (Fund 450).

**SUGGESTED MOTION:**

Approve Amendment No. 1 to Task Order No. 18 with AE2S in the amount of \$13,905 for engineering with Project WA2254, Regional Water Distribution Extensions.

Your consideration in this matter is greatly appreciated.

**Amendment No. 1 To Water Consulting Task Order No. 18**

In accordance with Exhibit K of the Agreement Between Owner and Engineer for Professional Water Consulting Services – Task Order Edition, dated January 1, 2021 (“Agreement”), Owner and Engineer agree to amend an existing Task Order as follows:

**1. Background Data:**

- a. Effective Date of Amendment: February 1, 2022
- b. Owner: City of Fargo (Water Utility)
- c. Engineer: Advanced Engineering and Environmental Services, LLC (AE2S)
- d. Engineer Project No.: P00803-2022-002
- e. Specific Project (title): Fargo Regional Water Distribution Extensions

**2. Description of Modifications**

- a. Engineer shall perform the following Additional Services:

*Perform potholing services and field investigation to verify location of the existing 12-inch Tharaldson Ethanol water reuse pipeline along select areas of 52<sup>nd</sup> Avenue North as directed by Fargo Engineering Department.*

- b. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
<i>090</i>	<i>Additional Services</i>	<i>Method A – Lump Sum</i>		
<i>01</i>	<i>Utility Potholing</i>		<i>NA</i>	<i>\$13,905</i>

**3. Task Order Summary (Reference only)**

- a. Original Task Order amount: \$338,000
- b. Net change for prior amendments: \$0.00
- c. This amendment amount: \$13,905
- d. Adjusted Task Order amount: \$351,905

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C of the Agreement.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect.

The Effective Date of this Amendment is February 1, 2022.

OWNER: City of Fargo (Water Utility)

ENGINEER: Advanced Engineering and  
Environmental Services, LLC (AE2S)

By:

\_\_\_\_\_

By:

\_\_\_\_\_

Name: Troy Hall

\_\_\_\_\_

Name: Ryan Grubb, PE

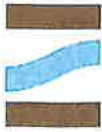
\_\_\_\_\_

Title: Water Utility Director

\_\_\_\_\_

Title: Operations Manager

\_\_\_\_\_

**EAGLE RIVER**

UTILITY SOLUTIONS

932 40th Street North  
Fargo, ND 58102**Invoice**

Date	Invoice #
10/31/2022	959

Kevin Johnson  
AE2S

P.O. No.	Terms
	Due on receipt

Item	Description	Quantity	Rate	Amount
	Please see below for Vac Work & Restoration for AE2S 52nd Ave N, Fargo (VAC)			
Misc Lump Sum	*10/12 - Large Vac	8	425.00	3,400.00
Misc Lump Sum	*10/13			
Misc Lump Sum	12 yards (16.2 tons) fill sand	16.2	14.15	229.23
Misc Lump Sum	1 hour Dump Truck (\$38) + Operator (\$54)	1	92.00	92.00
Misc Lump Sum	1 hour Backhoe (\$136) + Operator (\$54)	1	190.00	190.00
Misc Lump Sum	*10/20 - Large Vac	6	425.00	2,550.00
Misc Lump Sum	*10/25 - Large Vac	9.75	425.00	4,143.75
Misc Lump Sum	*10/28 - Large Vac	6	425.00	2,550.00
	*11/1			
Misc Lump Sum	14.5 yards (19.58 tons) fill sand	19.58	14.15	277.06
Misc Lump Sum	1 hour Dump Truck (\$38) + Operator (\$54)	1	92.00	92.00
Misc Lump Sum	2 hour Backhoe (\$136) + Operator (\$54)	2	190.00	380.00

Thank You!

**Total** \$13,904.04

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. NR-20-A3

Type: Final Balancing Change Order #2

Location: STS LS #6, #8 &amp; #49

Date of Hearing: 1/30/2023

Routing

City Commission

Date  
2/6/2023

PWPEC File

X

Project File

Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, related to Final Balancing Change Order #2 in the amount of \$1,966.97, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #2 in the amount of \$1,966.97, bringing the total contract amount to \$110,274.09.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of Final Balancing Change Order #2 to Sun Electric.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #2 in the amount of \$1,966.97, bringing the total contract amount to \$110,274.09 to Sun Electric.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments & Storm Sewer Utility Funds

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	
Agreement for payment of specials required of developer	<u>N/A</u>	
Letter of Credit required (per policy approved 5-28-13)	<u>N/A</u>	

COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Michael Redlinger, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Brenda Derrig, City Engineer  
 Terri Gayhart, Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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ATTEST:

C: Kristi Olson

  
 Brenda E. Derrig, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Rob Hasey, Project Manager  
**Date:** January 30, 2023  
**Re:** Improvement District No. NR-20-A3 – Final Balancing Change Order #2  
Storm Sewer Lift Station Rehab – Electrical Contract

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### Background:

Improvement District No. NR-20-A3 is the Electrical Contract for modifying Storm Sewer Lift Stations #6, #8 & #49. New SCADA Controls at lifts #6 & #8 added remote monitoring of pumping operations and lift #49 received new controls for the pumps along with SCADA equipment.

At storm sewer lift station #6, one of the three pumps was replaced. Sun Electric needed to pull in extra control wires that were not shown on the plans. The existing floor penetration for the level floats and transducer cables was unable to be reused and a new hole needed to be cored. This resulted in an extra cost of \$1,029.77.

At storm sewer lift station #8, two of the three pumps were replaced. Sun Electric needed to pull in extra control wires that were not shown on the plans. This resulted in an extra cost of \$665.00.

At storm sewer lift station #49, the City's Electrical Inspector required a neutral wire to be installed from the electrical meter to the new control panel that was not shown on the plans. This resulted in an extra cost of \$272.20.

The original contract amount was \$98,000. Change Order #1 totaled \$10,307.12. FBCO #2 totals \$1,966.97 bringing the final contract price to \$110,274.09.

All costs are shared 50% Special Assessments & 50% Storm Sewer Utility.

### Recommended Motion:

Approve Final Balancing Change Order #2 in the amount of \$1,966.97 for the extra work described above.

RJH/klb  
Attachments

C: Jody Bertrand, Division Engineer





CHANGE ORDER REPORT  
STORM SEWER LIFT STATION REHAB/RECONSTRUCTION & INCIDENTALS  
IMPROVEMENT DISTRICT NO. NR-20-A3  
STS LS #6, #8, #49, #51 & #70

Final Balancing  
Change Order

Change Order No 2 Change Order Date 1/17/2023  
Contractor Sun Electric

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 2

At storm sewer lift station #6 one of the three pumps was replaced. Sun Electric needed to pull in extra control wires that were not shown on the plans. The existing floor penetration for the level floats and transducer cables was unable to be reused and a new hole needed to be cored. This resulted in an extra cost of \$1,029.77. At storm sewer lift station #8 two of the three pumps were replaced. Sun Electric needed to pull in extra control wires that were not shown on the plans. This resulted in an extra cost of \$665.00. At storm sewer lift station #49 the City's Electrical Inspector required a neutral wire to be installed from the electrical meter to the new control panel that was not shown on the plans. This resulted in an extra cost of \$272.20.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 2	4	F&I Lift Station Electrical	LS	-4	1	0	1	1	\$1,029.77	\$1,029.77
	5	F&I Lift Station Electrical	LS	-4	1	0	1	1	\$665.00	\$665.00
	6	F&I Lift Station Electrical	LS	-4	1	0	1	1	\$272.20	\$272.20
Change Order 2 Sub Total										\$1,966.97



Summary

Source Of Funding

Net Amount Change Order # 2 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Special Assessments (50%) Storm Sewer Utility Fund 524 (50%)

\$1,966.97

\$10,307.12

\$98,000.00

\$110,274.09

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

APPROVED

For Contractor

Title

*Ryan Torges*  
*Project Manager*

APPROVED DATE

Department Head

Mayor

Attest

*B. E. D.*

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. NR-20-A2

Type: Final Balancing Change Order #2

Location: STS LS #6, 8, 49, 51 &amp; 70

Date of Hearing: 1/30/2023

RoutingDate

City Commission

2/6/2023

PWPEC File

X

Project File

Jody Bertrand

33

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, related to Final Balancing Change Order #2 in the amount of \$24,687.48, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #2 in the amount of \$24,687.48, bringing the total contract amount to \$1,098,721.68.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of Final Balancing Change Order #2 to CC Steel.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #2 in the amount of \$24,687.48, bringing the total contract amount to \$1,098,721.68 to CC Steel.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility Funds & Special Assessments

	Yes	No
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	
Agreement for payment of specials required of developer	<u>N/A</u>	
Letter of Credit required (per policy approved 5-28-13)	<u>N/A</u>	

COMMITTEE

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Michael Redlinger, City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Terri Gayhart, Finance Director



Brenda E. Derrig, P.E.  
City Engineer

ATTEST:

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC  
**From:** Rob Hasey, Project Manager  
**Cc:** Jody Bertrand, Division Engineer  
**Date:** January 30, 2023  
**Re:** Improvement District No. NR-20-A2 – STS LS Rehab – General Contract FBCO #2

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### Background:

Improvement District No. NR-20-A2 is the General Contract for modifying Storm Sewer Lift Stations #6, #8, #49, #51 & #70.

At lift station #8 we installed a new crushed concrete access road from 4<sup>th</sup> Avenue South to the lift station. After the crushed concrete was installed, we were experiencing washouts across the road due to downspout discharge from the adjacent building. To fix this problem we initially installed round rock at these locations to allow the water to flow through but the rock would rut under vehicle traffic. We had the Contractor remove the round rock and replace it with granite that had an angular shape that allows the rock to bind together under vehicle traffic. The total cost for this was \$1,685.00.

Inside lift station #8 the interior dimension of the lift station in the plans did not reflect the actual diameter of the lift station structure therefore creating a gap from the catwalk platform to the south wall of the lift station. Additional catwalk grating to fill this gap was installed at a cost of \$2,591.83.

At the request of the street department, a sump pit structure was installed in the channel liner just upstream of lift station #8 to assist with the yearly cleaning operations of the lift station. This sump pit structure will allow a portable pump suction hose to be placed below the channel liner elevation allowing the pump to operate more efficiently to bypass the low flow in the channel until the lift station has been cleaned. The total cost for adding this sump pit is \$3,000.00.

At lift station #49 we needed to add concrete fill around two 66" pipes that entered the gateway structure prior to installing two new sluice gates that will help close off inflow for yearly cleaning operations on the upstream side and one on the downstream side to provide a backup closure from the drain if the large gravity flap gate does not seal. The total cost for this is \$2,322.00.

At lift station #17 the Street Department identified a ladder inside the lift station that was unsafe and needed to be replaced. CC Steel acquired a new ladder from Red River Fabrication and installed it for a total cost of \$5,178.65. This cost is 100% Storm Sewer Utility funded since this lift station is for the railroad underpass on University Drive at Main Avenue.

The original contract amount was \$1,051,534.20. CO #1 totaled \$22,500 and FBCO #2 totals \$24,687.48 bringing the final contract price to \$1,098,721.68.

### Recommended Motion:

Approve Final Balancing Change Order #2 in the amount of \$24,687.48 to CC Steel, LLC.

All costs for lift stations 6, 8 & 49 are shared 50% Special Assessments & 50% Storm Sewer Utility. Costs for lift stations 17, 51 & 70 are 100% Storm Sewer Utility.

Attachments



**CHANGE ORDER REPORT**  
**STORM SEWER LIFT STATION REHAB/RECONSTRUCTION & INCIDENTALS**  
**IMPROVEMENT DISTRICT NO. NR-20-A2**  
**STS LS #6, #8, #49, #51 & #70**

Final Balancing  
Change Order

Change Order No 2      Change Order Date 1/24/2023  
 Contractor CC Steel, LLC

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE**      Change Order # 2

[STS LS #8 - Repair road washouts: Vactron 3 hours @ \$325/hr (\$975) + 6 hours labor @ \$75/hr (\$450) + 4 cy granite @ \$65/cy (\$260) = \$1,685.00.] [STS LS #8 - Additional catwalk: Materials \$1,587.78 + 15% profit/overhead (\$238.17) + 1% bond (\$15.88) + 10 hours labor @ \$75/hr (\$750) = \$2,591.83] [STS LS #8 - Add sump pit to channel liner: \$3,000.00 LS] [STS LS #49 - Backpour behind sluice gates: Materials \$450 + 15% profit/overhead (\$67.50) + 1% bond (\$4.50) + 24 hours labor \$ 75/hr (\$1,800) = \$2,322.00] [STS LS #17 - Remove and replace 22' ladder: Materials \$3,171.25 = 15% profit/overhead (\$475.69) + 1% bond (\$31.71) + \$1,500 labor LS = \$5,178.65]

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
SITE #2 (STS LS #8)		Traffic Control - Type 1	LS	1		1	-1	0	\$1,500.00	-\$1,500.00
		Inlet Protection - Existing Inlet	EA	2		2	-2	0	\$250.00	-\$500.00
SITE #2 (STS LS #8) Sub Total										-\$2,000.00
SITE #4 (STS LS #49)		Topsoil - Import	CY	5		5	-5	0	\$100.00	-\$500.00
		Seeding Type C	SY	50	0	200	55	255	\$5.00	\$275.00
SITE #4 (STS LS #49) Sub Total										-\$500.00
SITE #1 (STS LS #6)	7	Seeding Type C	SY	50	0	200	55	255	\$5.00	\$275.00
	8	Mulching Type 1 Hydro	SY	40	0	200	55	255	\$5.00	\$275.00
SITE #1 (STS LS #6) Sub Total										\$550.00
Change Order 2	11	Special Bid Item A	LS	-3	1	0	1	1	\$1,685.00	\$1,685.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	12	Special Bid Item A	LS	-3	1	0	1	1	\$2,322.00	\$2,322.00
	13	Special Bid Item A	LS	-3	1	0	1	1	\$5,178.65	\$5,178.65
	14	Special Bid Item B	LS	-1	1	0	1	1	\$2,591.83	\$2,591.83
	15	Special Bid Item C	LS	0	0	0	1	1	\$3,000.00	\$3,000.00
								<b>Change Order 2 Sub Total</b>		<b>\$14,777.48</b>
SITE #2 (STS LS #8)	22	Seeding Type A	SY	500	0	500	10	510	\$5.00	\$50.00
	23	Mulching Type 1 Hydro	SY	295	0	500	10	510	\$5.00	\$50.00
	25	F&I Channel Liner 7" Thick Reinf Conc	SY	5	0	5	6	11	\$395.00	\$2,370.00
	26	F&I Slope Protection 5" Thick Reinf Conc	SY	44	0	44	24	68	\$200.00	\$4,800.00
	29	Remove Curb & Gutter	LF	31	0	31	1	32	\$10.00	\$10.00
	30	F&I Curb & Gutter Standard (Type II)	LF	31	0	31	1	32	\$80.00	\$80.00
								<b>SITE #2 (STS LS #8) Sub Total</b>		<b>\$7,360.00</b>
SITE #4 (STS LS #49)	42	Mulching Type 1 Hydro	SY	-15	0	50	150	200	\$15.00	\$2,250.00
	43	Seeding Type C	SY	-5	0	50	150	200	\$15.00	\$2,250.00
								<b>SITE #4 (STS LS #49) Sub Total</b>		<b>\$4,500.00</b>

Summary.

**Source Of Funding**

**Net Amount Change Order # 2 (\$)**

**Previous Change Orders (\$)**

**Original Contract Amount (\$)**

**Total Contract Amount (\$)**

Special Assessments (49.71%) Storm Sewer Utility Fund 524 (50.29%)

\$24,687.48

\$22,500.00

\$1,051,534.20

\$1,098,721.68

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

APPROVED	APPROVED DATE
For Contractor	Department Head
Title	Mayor
	Attest

*Ella G. Trio*

CC Steel, LLC by Ella G. Trio

Chief Manager

*Beth E. D.*

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-22-C1

Type: Change Order #1 &amp; Time Extension

Location: 3<sup>rd</sup> Ave N, 10<sup>th</sup> St – 7<sup>th</sup> St N,  
2<sup>nd</sup> Ave to 4<sup>th</sup> Ave

Date of Hearing: 1/30/2023

Routing

City Commission

PWPEC File

Project File

Date

2/6/2023

X

Brian Skanson

The Committee reviewed the accompanying correspondence from Project Manager, Brian Skanson, related to Change Order #1 in the amount of \$9,177.75 for additional work, along with the associated time extension to the Phase 1 Interim, Substantial and Final Completion Dates as follows:

Original Completion Dates	Revised this Memo
Phase 1 Interim – August 5, 2022	Phase 1 Interim – Sept. 16, 2022
Substantial – September 30, 2022	Substantial – November 11, 2022
Final – October 28, 2022	Final – June 30, 2023

Staff is recommending approval of Change Order #1 in the amount of \$9,177.75 and the time extension to the Phase 1 Interim, Substantial and Final Completion Dates as described above.

On a motion by Ben Dow, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 and the time extensions to Master Construction.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$9,177.75 bringing the total contract amount to \$1,722,365.75 and the time extension to the Phase 1 Interim, Substantial and Final Completion Dates adjusting the dates to September 16, 2022, November 11, 2022 and June 30, 2023 to Master Construction.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WW Utility Funds, Water Utility Funds & Special Assessments

Developer meets City policy for payment of delinquent specials  
Agreement for payment of specials required of developer  
Letter of Credit required (per policy approved 5-28-13)

Yes	No
N/A	
N/A	
N/A	


COMMITTEE

Tim Mahoney, Mayor  
Nicole Crutchfield, Director of Planning  
Steve Dirksen, Fire Chief  
Michael Redlinger, City Administrator  
Ben Dow, Director of Operations  
Steve Sprague, City Auditor  
Brenda Derrig, City Engineer  
Terri Gayhart, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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ATTEST:

C: Kristi Olson

  
Brenda E. Derrig, P.E.  
City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Brian Skanson, Project Manager  
**Date:** January 17, 2023  
**Re:** Improvement District No. BR-22-C1 – Change Order #1 & Time Extension

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### Background:

Improvement District No. BR-22-C1 is for the Paving and Utility Rehab/Reconstruction of 3<sup>rd</sup> Avenue North from 10<sup>th</sup> Street to 7<sup>th</sup> Street and on 7<sup>th</sup> Street North from 2<sup>nd</sup> Avenue to 4<sup>th</sup> Avenue.

Master Construction Co. is the Prime Contractor for this project.

The attached Change Order in the amount of \$9,177.75 (0.54% of the original contract), which increases the total contract amount to \$1,722,365.75, is for additional work as shown on Change Order #1.

### Change Order #1:

- 1) The Contractor had to remove some fill sand and import clay to get the road base to pass compaction on 3<sup>rd</sup> Avenue and 7<sup>th</sup> Street. The Contractor is requesting \$4,125 for this additional work.
- 2) The Contractor used their subcontractor (NorthStar Safety Inc.) for additional traffic control signs and set up at the intersection of 10<sup>th</sup> Street and 3<sup>rd</sup> Avenue North as well as the intersection of 7<sup>th</sup> Street and 2<sup>nd</sup> Avenue North. The Contractor is requesting \$2,997.5 for this additional work.
- 3) The Contractor hired a subcontractor (Parsons Electric) to repair a street light conduit that was not located and damaged. The Contractor is requesting \$1,185.25 for this additional work.
- 4) The Contractor constructed a crushed concrete approach for parking lot access at #224 7<sup>th</sup> Street North for the United States Postal Service. The Contractor is requesting \$870 for this additional work.

Master Construction is requesting a change in the Interim, Substantial, and Final Completion Dates due to extra work and material delays, for a total of 42 additional days.

### Recommended Motion:

Approve Change Order #1 in the amount of \$9,177.75 and the associated time extensions for the Completion Dates as shown below:

Original Completion Dates	Revised this Memo
Phase 1 Interim – August 5, 2022 Substantial – September 30, 2022 Final – October 28, 2022	Phase 1 Interim – Sept. 16, 2022 Substantial – November 11, 2022 Final – June 30, 2023





**CHANGE ORDER REPORT**  
**PAVING AND UTILITY REHAB/RECONSTRUCTION**  
**IMPROVEMENT DISTRICT NO. BR-22-C1**

**3RD AVENUE NORTH FROM 10TH STREET TO 7TH STREET, 7TH STREET NORTH  
 FROM 2ND AVENUE TO 4TH AVENUE, AND ON 8TH STREET NORTH FROM 3RD  
 AVENUE TO 4TH AVENUE.**

**Change Order No** 1 **Change Order Date** 1/5/2023  
**Contractor** Master Construction Co Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE** Change Order # 1

This Change Order is for the removal of fill sand and import clay for the road base on 3rd Ave N and 7th St N (paid as Fill-Import), the additional signs and traffic control at the intersections of 10th St and 3rd Ave as well as 7th St and 2nd Ave (paid as Traffic Control-Type 1), the street light conduit repair at 10th St (paid as Repair Street Light Miscellaneous), and the crushed concrete approach for the USPS parking lot access (paid as Special Bid Item A). This Change Order also recognizes the time extensions for Substantial completion to November 11, 2022 and the Final Completion to June 30, 2023.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	12	Fill - Import	CY	0	0	0	275	275	\$15.00	\$4,125.00
	13	Traffic Control - Type 1	LS	0	0	0	1	1	\$2,997.50	\$2,997.50
	14	Repair Street Light Miscellaneous	EA	0	0	0	1	1	\$1,185.25	\$1,185.25
	15	Special Bid Item A	LS	0	0	0	1	1	\$870.00	\$870.00
										<b>Change Order 1 Sub Total</b>
										<b>\$9,177.75</b>

**Summary**

**Source Of Funding**

**Net Amount Change Order # 1 (\$)**

**Previous Change Orders (\$)**

**Original Contract Amount (\$)**

**Total Contract Amount (\$)**

Waterwater Utility Funds, Water Utility Funds, & Special Assessments

\$9,177.75

\$0.00

\$1,713,188.00

\$1,722,365.75

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT DATES**

**Current Substantial Completion Date**

9/30/2022

**Current Final Completion Date**

10/28/2022

**Additional Days Substantial Completion**

42

**Additional Days Final Completion**

245

**New Substantial Completion Date**

11/11/2022

**New Final Completion Date**

6/30/2023

**Interim Completion Dates**

APPROVED  
For Contractor  
Title



APPROVED DATE  
Department Head  
Mayor  
Attest

